



ATTORNEY-
GENERAL'S
CHAMBERS

REVIEW OF ARBITRATION LAWS

LAW REFORM AND REVISION DIVISION
ATTORNEY-GENERAL'S CHAMBERS
SINGAPORE

LRRD No. 3/2001

REVIEW OF ARBITRATION LAWS

The Review of Arbitration Laws Committee comprises:

Mr Charles Lim Aeng Cheng - Head LRRD
Ms Chiu Hse Yu - Legal Service Officer

Law Reform Consultant

Mr Lawrence Boo Geok Seng, The Arbitration Chambers

The following persons have rendered invaluable assistance to the Committee:

Legal

Mr Teo Cher Hian (up to September 1999) (then Legal Service Officer)

Editorial and publication

Ms Yvette C Rodrigues - Senior Legal Executive
Mr Jeffrey Mohamad - Corporate Support Officer
Ms Noraini Jantan - Corporate Support Officer

GLOSSARY OF ABBREVIATIONS

AA	Arbitration Act (Cap.10)
IAA	International Arbitration Act (Cap.143A)
LRCC	Law Reform Co-ordinating Committee under the Ministry of Law, chaired by the Attorney-General
ML	UNCITRAL Model Law on Arbitration
NUS	Law Faculty, National University of Singapore
NTU	Department of Law, Nanyang Technological University
OA	Official Assignee
SAL	Law Reform Committee, Singapore Academy of Law, chaired by Justice LP Thean
SIA	Singapore Institute of Architects
SIAC	Singapore International Arbitration Centre
SIARB	Singapore Institute of Arbitrators

THE REVIEW OF ARBITRATION LAWS — FINAL REPORT

	<i>Page</i>
Executive Summary	vii – viii
 PART I – A Clause-By-Clause commentary on the Proposed Arbitration Bill 2001	
1. Background to review	1
2. Draft Arbitration Bill 2001	
2.1 <i>Scope of application (Clause 2)</i>	2 – 3
2.2 <i>The arbitration agreement (Clause 4)</i>	3 – 5
2.3 <i>Effect of death and bankruptcy (Clause 5)</i>	5
2.4 <i>Court proceedings and the arbitration agreement (Clauses 6, 7 & 8)</i>	5 – 7
2.5 <i>Commencement of arbitration proceedings (Clauses 9 to 11)</i>	7 – 8
2.6 <i>Composition and appointment of arbitrators (Clauses 12 & 13)</i>	8 – 9
2.7 <i>Challenge of arbitrators (Clauses 14 & 15)</i>	9 – 10
2.8 <i>Removal of arbitrator (Clauses 16 & 17)</i>	11 – 12
2.9 <i>Appointment of substitute arbitrator (Clause 18)</i>	12 – 13
2.10 <i>Decision by panel of arbitrators (Clause 19)</i>	13 – 14
2.11 <i>Liability of arbitrators (Clause 20)</i>	14
2.12 <i>Doctrine of separability and kompetenze-kompetenze (Clause 21)</i>	15 – 17
2.13 <i>General duties of tribunal (Clause 22)</i>	17
2.14 <i>Rules of procedure (Clause 23)</i>	17 – 18
2.15 <i>Filing and service of statements, documents (Clause 24)</i>	18
2.16 <i>Holding hearings (Clause 25)</i>	18 – 19
2.17 <i>Consolidation of arbitral proceedings, concurrent hearings (Clause 26)</i>	19
2.18 <i>Appointing experts (Clause 27)</i>	19 – 20
2.19 <i>General powers of the tribunal (Clause 28)</i>	20 – 21
2.20 <i>Tribunal’s powers in the event of default by party (Clause 29)</i>	21 – 22
2.21 <i>Court’s supportive powers (Clauses 30 & 31)</i>	22
2.22 <i>Applicable laws (Clause 32)</i>	22 – 23
2.23 <i>Awards on different issues (Clause 33)</i>	23
2.24 <i>Remedies (Clause 34)</i>	24
2.25 <i>Interest (Clause 35)</i>	24
2.26 <i>Extension of time to make award (Clause 36)</i>	24
2.27 <i>Award by consent (Clause 37)</i>	25
2.28 <i>Form and contents of award (Clause 38)</i>	25
2.29 <i>Costs of arbitration (Clause 39)</i>	25 – 26
2.30 <i>Fees of arbitrator (Clause 40)</i>	26
2.31 <i>Solicitor’s lien (Clauses 41 & 42)</i>	26
2.32 <i>Additional award and corrections (Clause 43)</i>	26 – 27
2.33 <i>Effect of the award (Clause 44)</i>	27 – 28

	<i>Page</i>	
2.34	<i>Determination of preliminary point of law (Clause 45)</i>	28
2.35	<i>Enforcement of the award (Clause 46)</i>	28
2.36	<i>No judicial review of award (Clause 47)</i>	28
2.37	<i>Setting aside of awards (Clause 48)</i>	28 – 33
2.38	<i>Appeal against awards (Clause 49)</i>	33 – 34
2.39	<i>Supplementary provisions on appeal (Clause 50)</i>	34
2.40	<i>Effect of order of Court on appeal (Clause 51)</i>	34 – 35
2.41	<i>Procedural matters relating to applications for leave to appeal (Clause 52)</i>	35
2.42	<i>Miscellaneous matters (Clauses 53 to 67)</i>	35 – 36

**PART II – A Brief Commentary on the International Arbitration
(Amendment Bill) 2001**

3. Draft International Arbitration (Amendment) Bill

3.1	<i>Matters consistent with the new Arbitration Bill 2001</i>	37
3.2	<i>Stay of proceedings to preclude operation of Article 8 Model Law</i>	37
3.3	<i>Law of arbitration other than Model Law (Clause 11)</i>	37 – 38

PART III – Conclusion

38

Annex A	Arbitration Bill
Annex B	Table of Derivation of provisions in Bills
Annex C	International Arbitration (Amendment) Bill
Annex D	List of representatives from selected agencies for consultation

EXECUTIVE SUMMARY

Background: The Review of Arbitration Act Committee was formed by the Attorney-General in 1997 to review the Arbitration legislation in Singapore. This is in light of the enactment of the International Arbitration Act in 1994 that adopts the UNCITRAL Model Law for arbitration. We undertook the study for the purposes of updating the law applicable to domestic arbitration and to narrow, as far as possible, the differences between the international and domestic statutes so that Singapore will have a harmonious and business-friendly regime. We completed a draft Arbitration Bill 2000 and International Arbitration (Amendment) Bill 2000, and a clause-by-clause commentary on the draft Arbitration Bill 2000 in early 2000. In March 2000, we held a briefing for all parties whose comments on the draft Bills were sought and sent the drafts and commentary to them for consultation. The persons and agencies consulted are set out in Annex C.

We have since received useful and extensive feedback and have included much of the feedback in the attached draft Bills. In particular, with the approval of the Attorney-General, we have provided in the draft Arbitration Bill an enhanced role for the Singapore International Arbitration Centre in domestic arbitration in the “default” appointment of arbitrators.

Two regimes in arbitration laws: We are of the view that the legislative regimes applicable to domestic arbitration and international arbitration should be kept separate although to a large extent, the two regimes, as we stated earlier, are harmonised. The separation of domestic arbitration laws and international arbitration laws allows the courts a greater degree of curial supervision over the development of domestic arbitration laws. Thus, it is more user-friendly to keep the legislative regimes separate so as to prevent confusion. We made an interim report to the Attorney-General on the direction of the review on 14th December 1997. The Attorney-General agreed that the two legislative regimes should remain separate but to a large extent consistent for domestic arbitration and international arbitration respectively.

Draft Arbitration Bill 2001

Domestic regime close to Model Law and UK Arbitration Act: The Arbitration Bill 2001 provides for the new domestic arbitration laws to be more in line with the UNCITRAL Model Law. We have also adopted many useful features from the UK Arbitration Act 1996 which was enacted to be in line with the UNCITRAL Model Law as well. We have also adopted several provisions from our International Arbitration Act, such as the power to set aside an award, power to correct an award, confidentiality of proceedings and appointment of arbitrators as mediators.

Curial intervention under domestic arbitration laws: Curial powers include stay of proceedings, powers of the court to order injunctions and hearing of appeals against arbitral awards. We would like to highlight that from a large number of submissions, we observe that the old law providing for powers of stay limits such powers to be exercised by the High Court. Thus, even if proceedings began in the Subordinate Courts, the judges of the Subordinate Courts have to refer stay applications to the High Court. This is procedurally inconvenient and consumes the valuable resources of the High Court. We have now provided for the District and Magistrate’s Courts to exercise powers to stay legal proceedings for matters arising in those Courts. These changes were made in

response to representations made by the Judiciary. Powers of issuing injunctions, Mareva injunctions and Anton Piller orders are reserved for the courts under the draft Arbitration Bill 2001.

Enhanced role for SIAC in appointment matters: Upon the representation of the Singapore International Arbitration Centre, we have considered and agreed to their proposal of providing for an enhanced role for the SIAC in appointment matters. The SIAC is actively involved in both domestic and international arbitrations and looks forward to being a paramount body overseeing arbitration in Singapore. Through its regular contact with arbitrators and administration of arbitration cases, the SIAC is well informed about capabilities of potential appointees to make appropriate decisions in appointment matters. The Chairman of the SIAC is designated the appointing authority for parties in default of or in event of failure of appointment of arbitrators by the parties. The factors that the appointing authority must consider before making any appointment are set out in the draft Bill.

Draft International Arbitration (Amendment) Bill 2001 and consequential amendments

Consequential amendments to other laws: We have also drafted an International Arbitration (Amendment) Bill to fine tune the existing International Arbitration Act so that it would not be inconsistent with the proposed provisions contained in the draft Arbitration Bill. We have also drafted consequential amendments to the Limitation Act as the limitation provisions relating to arbitration have been moved to the Arbitration Bill and the International Arbitration Act. We also provided in the Arbitration Bill consequential amendments to the Bankruptcy Act so that provisions relating to effect of arbitration agreements in event of bankruptcy are dealt with in the latter Act.

Express opting-out of the IAA: The provision in the existing International Arbitration Act (section 15) dealing with opting out of the Model Law or the IAA is amended to make it clear that parties may expressly opt out of the Model Law or the IAA, in which case, the Arbitration Act 2001 applicable to domestic arbitration will apply to those parties' arbitration. The amendment also makes it clear that the reference to the adoption of any arbitral institutional rules shall not be sufficient to exclude the application of the Model Law or Part II of the IAA to the arbitration concerned.

THE REVIEW OF ARBITRATION LAWS — FINAL REPORT

PART I – A CLAUSE-BY-CLAUSE COMMENTARY ON THE PROPOSED ARBITRATION BILL 2001

1. Background to review

1.1 A Committee to review the Arbitration Act was formed by the Attorney-General in 1997. This was in light of the enactment of the International Arbitration Act in 1994 that adopted the UNCITRAL Model Law for arbitration. We undertook the study for the purposes of updating the law applicable to domestic arbitration and to narrow, as far as possible, the differences between the international and domestic Acts so that Singapore will have a harmonious and business-friendly regime.

1.2 In the course of our review, we studied extensively the UK Arbitration Act 1996, the New Zealand Arbitration Act 1996 and the UNCITRAL Model Law on arbitration.

1.3 On 14th December 1997, we submitted an interim report to the Attorney-General on the direction of the review. It was agreed that the two legislative regimes will remain separate for domestic arbitration and international arbitration respectively as slightly different concerns apply to international arbitration where parties are more sophisticated and highly mobile.

1.4 In early 2000, we completed a draft Arbitration Bill 2000 and International Arbitration (Amendment) Bill 2000, and a clause-by-clause commentary on the draft Arbitration Bill 2000. In March 2000, we held a briefing for all persons whose comments on the draft Bills are sought and sent the drafts and commentary to them for consultation. The persons and agencies consulted are set out in Annex C. [*References in this Report to the “original Bill” or “original clause” are to the Bill or the relevant clause in the Report or draft Bill as of March 2000 that was circulated for consultation.*]

1.5 We have since received useful and extensive feedback and have included much of the feedback in the draft Bills annexed to this Report. In particular, with the approval of the Attorney-General, we have provided in the draft Arbitration Bill an enhanced role for the Singapore International Arbitration Centre in domestic arbitration in the “default” appointment of arbitrators. The SIAC is actively involved in both domestic and international arbitrations and looks forward to being a paramount body overseeing arbitration in Singapore. Through its regular contact with arbitrators and administration of arbitration cases, the SIAC is well informed about capabilities of potential appointees to make appropriate decisions in appointment matters.

1.6 We have completed our final report and the draft Arbitration Bill 2001 and draft International Arbitration (Amendment) Bill 2001.

2. Draft Arbitration Bill 2001

2.1 Scope of application (Clause 2)

2.1.1 Non-recognition of 'delocalised' arbitration

The law governing the arbitration proceedings may often be different from the law of the arbitration agreement or the substantive law of the contract. Whereas parties to disputes may choose the substantive law of the contract in dispute, the law applicable to the arbitration often depends on the place of the arbitration. The Bill adopts the territorial criteria recommended in Model Law and affirms the position that every arbitration held in Singapore must be governed by an applicable law of arbitration either under the International Arbitration Act (IAA) or under this Bill¹. The concept of a 'delocalised' arbitration unconnected with any system of municipal laws would not be recognised². For the purposes of determining the scope of its application, the draft Bill sent for consultation in March 2000 (hereinafter referred to as the "original Bill" or such other variants that convey the same meaning) prescribes that the arbitration must be 'commercial' in nature, the place of arbitration must be in Singapore and that the IAA does not apply to that arbitration. Following the representation by the Singapore Institute of Arbitrators (SIArb), the term 'commercial' was deleted.

2.1.2 Place of arbitration

The 'place of arbitration' is defined as the juridical seat of the arbitration³, as may be agreed in the arbitration agreement or by the parties or determined by the arbitral tribunal. The term 'juridical seat' is a specific reference to the domicile or juridical capital of the arbitration; the place where the arbitration draws its legal legitimacy and nationality. It is to be distinguished from the place where the hearing is merely held⁴. SIArb suggested that the word 'place' be changed to 'seat'. The Law Reform Co-ordinating Committee (LRCC) however felt that the term is sufficiently wide and need no change. The original term was retained.

2.1.3 Court

The original definition of 'Court' expressly excluded application to clauses 6 to 8. Both the Law Reform Committee of the Singapore Academy of Law (SAL) and the Singapore International Arbitration Centre (SIAC) recommended that it be made clear that the reference in Clauses 6 to 8 are intended to include courts of the Subordinate Courts. The general supervisory functions over this Bill is intended to be vested in the High Court. However it is logical, that applications for stay of proceedings under Clauses 6 to 8 are made in the court in which the proceedings are pending. There is no reason why an application for stay of proceedings in the Subordinate Courts have to be made to the High Court. The Judiciary was also in support of this change which was given effect by a separate definition of "court" in Clauses 6 and 8.

¹ See *Coop International Pte Ltd v Ebel S.A.* [1998] 3 SLR 670

² This stand is similar to that of the English Court of Appeal in *Bank Mellat v Helliniki Teckniki SA* [1984] QB 291 (CA) per Kerr LJ at p 301 "English law does not recognise the concept of a 'de-localised' arbitration...of arbitral procedures floating in the transnational firmament, unconnected with any municipal system of law".

³ Section 3

⁴ Normally arbitration hearings are held at the place of arbitration. However there are occasions where the hearing or part of the hearings are held in different places.

2.1.4 *Arbitral tribunal*

The Law Faculty, National University of Singapore (NUS) suggested that the reference to ‘permanent arbitral institution’ be deleted from the definition of “arbitral institution” as arbitral institutions do not in themselves arbitrate. We do not fully agree as arbitral institutions do have the liberty to act as the Tribunal if a party so chooses.

2.1.5 SIArb suggested that ‘umpires’ be included in the definition of ‘arbitral tribunal’. SIAC on the other hand takes the position that the use of umpires should be discouraged. We do not see the need to retain the ‘umpire’ in the present draft as the ‘umpire’ has a narrow defined role and function distinct from that of the arbitrator or arbitral tribunal, and it may not be cost-efficient to appoint an umpire. (Also see para 2.10.1)

2.1.6 *Domestic*

The Bill is drafted primarily to support domestic arbitrations. However what constitutes ‘domestic’ arbitration is not defined. The approach adopted is that where an arbitration falls outside the scope of the IAA, it will then fall within the Bill. As the IAA defines what is ‘international arbitration’, an arbitration agreement which is not ‘international’ within the definition in the IAA would thus fall within the scope of domestic arbitration contemplated under the Bill. Similarly, where parties of an otherwise ‘international’ arbitration “opt out” of the IAA⁵, the arbitration would similarly fall within the scope of the Bill.

2.1.7 *Rules of arbitration*

Clause 2(3) refers to incorporation of arbitration rules. NUS suggested that we include a definition of “arbitration rules” to include rules of non-administering bodies such as the SIArb or the Singapore Institute of Architects (SIA). We see no need for this as the reference to arbitration rules is wide enough to cover all contractual rules adopted by the parties including those of trade or professional bodies.

2.1.8 In this Bill, we have also classified “award” excludes that the term orders and directions that are interim or interlocutory in nature.

2.2 *The arbitration agreement (Clause 4)*

2.2.2 *Defined legal relationship*

The Bill originally adopts the UNCITRAL Model Law (ML) definition of an “arbitration agreement”⁶. It recognises as arbitrable all disputes arising out of a ‘defined legal relationship, whether contractual or not’. Drafters of the ML have intended it to be given the widest interpretation so as to include non-contractual disputes such as interfering with contractual relations and infringement of trade marks or other intellectual property rights. The SAL submitted that the description ‘defined legal relationship, whether contractual or not’ is superfluous and adds nothing to the definition. We agree to delete the description.

⁵ Section 15 IAA

⁶ Article 7 ML

2.2.3 *In writing*

Article 7 of the ML is adopted in the Bill. An arbitration agreement may be in the form of a separate document or clause in a commercial contract. The arbitration agreement must be in writing. The writing requirement would be met if the arbitration agreement is contained in a document signed by the parties or if by exchange of ‘letters, telex, telegrams or other means of telecommunications’ which evidence such an agreement. The wider words ‘other means of telecommunications’ are intended to cover the use of facsimiles, electronic mail and digital signatures. The requirement for writing could also be waived if the existence of such an agreement was alleged and not denied by the other in their exchange of statements of claim and defence following the commencement of arbitral proceedings.

Incorporation by reference

Different trades or industries may have prescribed their own rules or standard terms of contract or references may be made to “master agreements”. It is also not uncommon for some companies to set their own ‘standard terms’ which they make reference to when doing business with others. These rules or terms or conditions may sometimes include an arbitration clause or a set of arbitral procedures.

The Bill provides that if in a written contract, reference is made to a document containing an arbitration clause, such reference constitutes an arbitration agreement “if the reference is such as to make the arbitration clause in the document referred as part of the contract”. The proviso in Clause 4(5) allows the court or the tribunal to ascertain the intention of the parties and to determine in each given situation how specific or general the words of incorporation ought to be⁷.

2.2.4 SIAC suggested that the ‘writing requirement’ should be moderated such that it requires no signature by both parties. The criteria for determining the existence of an arbitration agreement would be as ‘evidenced in writing’. We take the view that adopting a higher criteria will ensure that rights of parties to the courts will not be unwittingly compromised. Clear unequivocal words and the higher writing requirement should be maintained. SIAC’s proposed amendment to the provisions on agreement by the exchange of pleadings, being clearer in drafting, was however adopted.

2.2.5 *Bills of lading*

An exception was created in respect of contracts of carriage by sea evidenced in bills of lading. Bills of lading are negotiable instruments used extensively in international trade. Carriers normally issue these to shippers of goods on loading. Many bills of lading contain arbitration clauses or make references to terms containing an arbitration clause. The ultimate holders of such bills of lading would in most instances have no direct dealing with carriers. The strict requirement of writing called for under Clause 4(3) of the Bill would in most instances not be complied with. Secondly, a bill of lading is not usually itself the contract, but evidence of the contract of carriage. Thus, a reference in a bill of lading to an arbitration clause outside it may not under Clause 4(4) constitute an

⁷ *Aughton Ltd v MF Kent Services Ltd* [1992] ADRLJ 83; *Star-Trans Far East Pte Ltd v Norske-Tech Ltd & Ors* [1996] 2 SLR 409; *Concordia Agritrading Pte Ltd v Cornelder Hoogewerff (Singapore) Pte Ltd* [2001] 1 SLR 222

arbitration agreement between the parties. The exception is necessary to avoid frustrating the intentions of the shipping community who have traditionally resolved their disputes through the arbitral process. An amendment suggested by the SIAC to make this exception clearer was adopted. The definition of “arbitration agreement” in the IAA is also proposed to be amended for consistency with the Arbitration Bill 2001.

2.3 *Effect of death and bankruptcy (Clause 5)*

2.3.1 *Death of party*

Clause 5 re-states the position under the existing AA⁸. The arbitration agreement survives the death of a party. It continues to bind, and may be relied upon by, the estate of the deceased. This provision however does not have effect on any rule of law or statutory provision which extinguishes a cause of action upon death of a party, e.g., defamation, libel or slander.

2.3.2 *Bankruptcy of party*

A simplified Clause 6(1) to the original Bill as suggested by SI Arb was not adopted as it may in fact widen the scope of the arbitration agreement which might not have been contemplated by the parties. The Official Assignee (OA) was invited to comment on the existing section 5 of the AA dealing with cases of bankruptcy. We sought the OA’s view on whether such a provision should be transferred to the Bankruptcy Act as was done in the UK. The OA responded to us indicating support for this provision to be transferred to the Bankruptcy Act. A consequential amendment is drafted in this Bill to provide for that. The provision was also re-drafted in line with the equivalent provision in section 349A of the UK Insolvency Act 1986.

2.3.3 The Bill makes no reference to the insolvency of companies or other bodies corporate. Reference must be made to the Companies Act⁹ and such other relevant statutory instruments relating to the capacities of such bodies in cases of winding-up or insolvency. LRCC’s suggestion that the Companies Act be mentioned in the Bill was not adopted as we felt that such matters should properly remain within the Companies Act or for that matter any subsequent insolvency legislation.

2.4 *Court proceedings and the arbitration agreement (Clauses 6, 7 & 8)*

2.4.1 *Discretionary stay*

Clause 6 substantially retains the former requirements¹⁰ upon which a court would stay court proceedings that have been commenced in breach of an arbitration agreement¹¹. The use of the word “may” and the condition that the court should be satisfied that “there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement” are specifically intended to preserve the discretionary power of the court in

⁸ Section 4 AA

⁹ Section 258, 262, 269 Companies Act (Cap50, 1994 Ed)

¹⁰ Section 7 AA

¹¹ An application may be made even if the right to arbitrate is not immediate e.g. if other ADR processes may be needed prior to commencement of arbitration. See dicta in *Chanel Tunnel v Balfour Beatty* [1993] AC 334.

respect of stay of court proceedings. SIAC further suggested that an order for stay should be made “so far as the proceedings relate to the matter concerned” and we agree to it.

2.4.2 Hitherto applications for stay of court proceedings under the existing AA must be made to the High Court notwithstanding that the pending proceedings may be carried out in another court¹². The Bill changes this inconvenient procedure. It will allow applications for stay to be made to the court before which the proceedings are pending. The change is made by replacing the words “apply to the court” in the existing section 7(1) AA with “apply to that court” in Clause 6(1) of the Bill¹³. For the avoidance of doubt, a separate definition of ‘court’ is provided in these provisions. The Judiciary is in support of this change.

2.4.3 The Registrar of the Supreme Court made a representation to us that it would be timely to include a power that allows the court to make orders for discontinuance of actions when actions are sought to be stayed. We have considered the Registrar's representation, and after careful deliberation and consultation with the Attorney-General and the Chairman, Singapore International Arbitration Centre, we decided to make provision for a sub-clause (6) that provides for the court the power to discontinue certain stayed actions after at least 2 years since the last step in legal proceedings was taken subject to the safeguard that the court can only do so if there is no prejudice to the parties to the proceedings reviving the action.

2.4.4 *Stay on terms*

The Bill gives to the court granting stay the additional power to order stay on terms as it thinks fit. The court may also make interim ancillary or supplementary orders relating to property which is the subject matter of the dispute. Clause 6(2) and (3) are adopted from section 6(3) of the International Arbitration Act.

2.4.5 SIArb requested that upon filing of an application for stay under Clause 6, there should be a prohibition against entry of judgment in default of defence. This suggestion should not be acceded to as the mere filing of such an application would otherwise effectively freeze all judicial proceedings.

2.4.6 *Interpleader*

SIAC proposed that in interpleader cases, the Court should designate the SIAC as the body for resolution under Clause 7. We are of the view that such an enhanced role for the SIAC would require further consideration.

2.4.7 SIArb proposed that an additional provision be added to make clear that the court's discretion in ordering the matter in which interpleader relief is granted to arbitration, is unfettered. We however believe that Clause 7 as drafted is sufficiently clear that the discretion of the court is unfettered.

¹² See example of such a situation in *Lim Eng Hock Peter v Batshita International (Pte) Ltd* [1996] 2 SLR 741(High Court); [1997] 1 SLR 241(CA).

¹³ This was the same formula adopted in the IAA. See section 6 (1) IAA

2.4.8 *Court's power on stay of proceedings*

Clause 8 empowers the court, in relation to pending proceedings, to make provisions for the retention of or provision of alternative security pending arbitration. The original Clause 9 is limited specifically to Admiralty proceedings. Following the comments made by the SAL, the limitation to 'Admiralty proceedings' is removed. The reference to 'court' in Clause 9 is thus extended to include the courts in which the proceedings are pending.

2.5 *Commencement of arbitration proceedings (Clauses 9 to 11)*

2.5.1 The point in time at which arbitral proceedings is commenced is relevant in determining the application of appropriate time-bars, whether contractually agreed or statutorily imposed.

2.5.2 The statutory time limits prescribed in the Limitation Act¹⁴ and such other statutes apply to arbitration in the same manner as it applies to a matter in court¹⁵. For ease of reference, section 30(1) of the Limitation Act is replicated in Clause 11 of the Bill. SIAC further suggested that it should be made clear that a reference in the Limitation Act to the commencement of any action should be construed as a reference to the commencement of arbitral proceedings. We have amended Clause 11(1) accordingly.

2.5.3 The time and mode for commencement is presently set out in section 30(3)¹⁶ of the Limitation Act where the act of commencement of arbitration is when the demand for arbitration is "serve(d) on" on the other party. The term "service" or "to serve" implies an act ending with sending out, with or without need for actual receipt by the other party. To ensure that a party against whom arbitral proceedings are invoked have due notice of its commencement, the Bill adopts Article 21 of the ML. Clause 9 provides that an arbitration commences at the time the request for arbitration is "received by" the respondent. This imposes on the party commencing the proceedings the added duty to show that the respondent has received the request. This provision is non-mandatory¹⁷ as parties may agree to a different mode and define the act of commencement of arbitration. LRCC proposed that in relation to electronic mail transmissions a specific provision dealing with when electronic mail is received be added. We take the view that when the notice of arbitration or request is received is a question of fact that can never be adequately legislated. The question of when a request is received is also more appropriately addressed by institutional rules of arbitration.

2.5.4 The discretionary power of the court to allow an extension of time for commencement of arbitration proceedings that have been or would be commenced out of an agreed contractual time has been retained by Clause 10¹⁸. The basis upon which time

¹⁴ Section 30(1) Limitation Act Cap 163

¹⁵ See *The 'Merak'*, [1964] 2 LLR 527; *Unicoopjapan and Marubeni Iida Co v Ion Shipping Co*, *The 'Ion'*, [1971] 1 LLR 54. The term 'unless suit is brought' referred to in the Article III Hague Rules had been taken to mean the pursuit of remedy under the respective arbitration clauses. Singapore had adopted the Hague-Visby Rules which has a similar time limitation of 1 year from discharge of cargo. See *Carriage of Goods By Sea Act* Cap 33, Article III(6).

¹⁶ To be repealed - see Clause 66

¹⁷ Clause 9 is premised on "Unless otherwise agreed to by the parties..."

¹⁸ In the UK 1996 Act, changes have been made to a corresponding provision in which a formula that considers factors involving "circumstance outside the reasonable contemplation of the parties" and "unjust conduct" was adopted. Such a formula restricts the Court's discretion to only those specific circumstances. It was made on the premise that the concept of the Court having a general supervisory jurisdiction over

extension would be made is to prevent “undue hardship”. In doing so the Court may stipulate terms as it deems fit. NUS proposed that to take care of situations where parties contemplated other dispute resolution procedures as a prelude to arbitration, provision should be made to give the Court the power to extend the time for doing so. We agreed with the proposal and a new Clause 10(1)(a) is added.

2.6 *Composition and appointment of arbitrators (Clauses 12 & 13)*

2.6.1 Where no agreed number of arbitrators is agreed upon, the Bill preserves the existing position that one arbitrator is appointed.

2.6.2 The existing AA has provisions for appointment of arbitrators by the Court in those cases where a sole or 2-man tribunal was required or where the 2 appointed arbitrators could not agree on the third arbitrator.¹⁹ An obvious *lacuna* is the situation where a 3-man tribunal is required but one party fails or refuses to appoint their arbitrator resulting in the inability to appoint the third arbitrator.

2.6.3 The Bill originally provided for the appointment of arbitrators by the Court to include a situation where one party fails to make appointment of an arbitrator in a 3-man tribunal. Where a 2-man tribunal is required, and if one party fails to make the appointment, the Court too will make the appointment. The existing position under the AA²⁰ which permits the party who had made an appointment in a 2-man tribunal, to appoint that arbitrator as sole arbitrator if the second arbitrator is not appointed by the other party within 7 days, would no longer be applicable. While appointment of the second arbitrator may involve a longer time, it ensures that the independence and impartiality of the tribunal is not compromised.

2.6.4 These provisions are however non-mandatory as parties may agree on a procedure for appointing their arbitrator or arbitrators²¹.

2.6.5 The SIAC made representations that many arbitration clauses call for 2 or 3 men tribunals when the amount or issues in dispute do not warrant it. It was suggested that there should be a presumption in favour of a single arbitrator even if parties had stipulated otherwise in the arbitration agreement unless, *after a dispute has arisen they specifically agreed otherwise*. We however felt that the legislature should not unduly interfere with the choice of the parties on the composition of the tribunal including the number of the arbitrators. The recommendation of SIAC would in our view cross that threshold. SIAC also represented that where an arbitration agreement refers to a 2-man tribunal and an umpire, it should be read as referring to 3 arbitrators. We are however of the view that parties’ autonomy in deciding whether or not to have an umpire should be respected and that the adoption of SIAC’s suggestion would cause problems in the construction of arbitration agreements in which an umpire is provided for. We have thus decided not to accept this innovative suggestion.

2.6.6 The Ministry of Law also represented to us that it is not necessary to provide default appointment provisions for 2-man tribunals as this is not found in many legislative

arbitrations should be abandoned. To allow a general discretion may trespass on party autonomy. It should be noted however that the English Act covers both “international” and “domestic” arbitration.

¹⁹ Section 9(1) AA

²⁰ Section 9(2) AA

²¹ Clause 13

precedents in New Zealand, Canada and the Model Law. We have considered this representation and are of the view that clause 13(5) that allows parties to approach the default appointing authority in event of default of appointment under any agreement is sufficient to take care of situations where parties have stipulated 2-man tribunals and a default in appointment has occurred. We have thus incorporated in clause 13 the suggestion by the Ministry.

2.6.7 SIAC also made a representation to be named as the default appointing authority in place of the High Court. The SIAC is actively involved in both domestic and international arbitrations and looks forward to being a paramount body overseeing arbitration in Singapore. Through its regular contact with arbitrators and administration of arbitration cases, the SIAC is well informed about capabilities of potential appointees to make appropriate decisions in appointment matters. The Attorney-General has agreed to SIAC's representation to be provided with an enhanced role in domestic arbitration. A new Clause 13 has been drafted to allow the Chairman, SIAC to be the appointing authority in default of agreement of parties or in failure of parties in appointing arbitrators. The Clause also provides for the considerations that the SIAC must take into account of when making an appointment including factors such as the nature of the dispute, the identities of the parties, any suggestion made by parties in the appointment of an arbitrator, the qualifications of an arbitrator as provided in the arbitration agreement and any other factors that would relate to the independence or impartiality of an arbitrator²².

2.6.8 The SIAC also represented to us that in a 3-man tribunal, parties should in agreement appoint all 3 arbitrators, failing the extent of such agreement, the SIAC would appoint the remaining arbitrators. The SIAC was of the view that in a 3-man tribunal, if we follow the Model Law where, each party appoints one arbitrator and the third is appointed by the two arbitrators, the opportunity for arbitrators to participate in arbitration tends to be limited to a few in the circle. However, we felt that the law should not depart too much from the Model Law. Thus, we decided to adopt the formulation of having the parties by agreement appoint the third arbitrator, failing which the appointment would be made by the default appointing authority i.e. SIAC. SIAC eventually agreed with our counter-proposal which is incorporated in clause 13(3).

2.7 *Challenge of arbitrators (Clauses 14 & 15)*

2.7.1 An arbitrator's appointment or proposed appointment may be challenged. This is normally made before or at the appointment. The Bill adopts Article 12 ML in full and sets out 2 grounds for challenging the appointment of an arbitrator viz: that he lacks the qualifications agreed to by the parties; or that there are "justifiable doubts as to his impartiality or independence". With respect to the latter, the Bill requires a potential appointee to disclose circumstances which may give rise to such doubts. This is a continuing duty and disclosure must be made even after the appointment has been made and accepted.

2.7.2 Partiality as a ground for challenge exists in the present law²³. Circumstances that may raise issues as to impartiality and independence include any personal²⁴, business²⁵ or

²² These are factors normally found in institutional rules such as the ICC Rules 1998 (Art 9) and SIAC Rules 1997 (Rule 11). The rules made under the Hong Kong Arbitration Ordinance (Amd. 1996) Cap 341 also made references to similar considerations.

²³ Section 12(1) AA

²⁴ *Turnbul v Rural Municipality of Pipestone* (1915) 24 DLR 281

professional relationship with a party to the dispute or an interest in the outcome of the dispute. While the “lack of impartiality”²⁶ has been universally accepted as sufficient to unseat an arbitrator, there has been an attempt to distinguish from it, the lack of “independence”²⁷. As parties to the dispute may not readily appreciate the distinction and this may affect their confidence in the tribunal, we find it inappropriate to distinguish the two.

2.7.3 Challenge procedure

The original Bill provided in Clause 16(1) for the challenge procedure to be agreed by the parties. In the absence of an agreed procedure, the challenge shall be decided in the first instance by the tribunal appointed and then, by the High Court. The SIAC suggested that provisions be made to allow for challenges of arbitrators to be decided by an arbitral institution where the rules adopted so provide. We take the view that for the term ‘procedure for challenge’ to be meaningful, it must as of necessity include the right to agree as to which person or authority should decide on the challenge.

2.7.4 The words “whether or not the parties have agreed on a procedure for challenge” in the original Clause 16(3) of the Bill were removed on the representation of the NUS as being unnecessary and may in fact be ambiguous.

2.7.5 The original Clause 16(4), now Clause 15(4), is also re-worded to make clear that where the Court agrees with the challenge, “the Court may make such order as it thinks fit”. The question as to what would the effect of an award made if the challenge in Court was successful could be dealt with by the Court ‘as it thinks fit’.

2.7.6 SIArb suggested that the arbitrator should be given a right to be heard on a challenge in Court. We felt that as this is only a challenge procedure on the grounds of lack of impartiality or independence (and not an application to remove him from office), the Court should be given the discretion to decide whether or not to hear the challenged arbitrator.

2.7.7 The SIAC also proposed that where the body deciding the challenge is an arbitral institution, the decision of the institution shall not be subject to review by the Court. Where however the challenge is dealt with by the tribunal their decision will be subject to appeal. We see no need nor logical rationale for a specific provision exempting review of a decision by an arbitral institution.

²⁵ *Szilard v Szasz* [1955] 1 DLR 370; *Tracom SA v Gibbs Nathaniel (Canada) Ltd and Another* [1985] 1 LLR 586

²⁶ See *Turner (East Asia) Pte Ltd v Builders Federal (HK) Ltd & Anor* (No 2) [1988] 2 MLJ 502 where Chao J removed the arbitrator on the ground that there “is real likelihood of bias” although the Court took the view that ‘reasonable suspicion’ would suffice..

²⁷ In the English Arbitration Act 1996, the term “independence” had been deliberately omitted. In England it sometimes happened that the arbitrator and counsel for one of the parties are from the same chambers. The drafters felt that the inclusion of the term “independence” may allow a party to raise such a challenge. See the Departmental Advisory Committee on Arbitration Law, Report on the Arbitration Bill, February 1996 page 26-27. See also *Laker Airways v FLS Aerospace* [1999] 2 LLR 45 Rix J

2.8 Removal of arbitrator (Clauses 16 & 17)

2.8.1 Arbitrators under the existing Arbitration Act may also be removed in the course of the arbitration for “misconduct” either of himself or the proceedings²⁸ or for delay in proceeding with the reference and making the award²⁹. The term “misconduct” has been applied in many different circumstances. Apart from obvious violations of breach of natural justice, dealing with one party in the absence of the other³⁰, unjustified refusal to hear evidence and not giving opportunity to a party to be heard, the term embraces situations where the arbitrator has shown bias or potential for bias against a party in the arbitration. It has been held to be misconduct even where the arbitrator has not acted unfairly but has given a party grounds to suspect that he might not be able to act fairly in the resolution of the dispute³¹. It was also suggested that obvious incompetence may amount to misconduct³². The power of removal for “misconduct” has sometimes been abused by parties who use it as an avenue of appeal against the arbitrator’s ruling. Such applications are often very disruptive of the arbitral process.

2.8.2 Clause 16(1)(a) is intended to allow the parties to remove the arbitrator if he becomes incapable of conducting the proceedings by reason of physical or mental incapacity or if there are justifiable doubts as to his capacity to do so. The SAL commented that if there were justifiable doubts as to capacity then that should be sufficient and proposed that the Clause be re-worded to the lower requirement of ‘justifiable doubts as to physical/mental capacity’. We are of the view that the Clause as drafted contemplates 2 different situations: one where the arbitrator is shown to be physically or mentally incapable by medical or other evidence and another where there could well be insufficient evidence to prove incapacity but nevertheless the Court is persuaded that there are justifiable doubts as to that capacity. Clause 16(1)(a) is thus retained unamended.

2.8.3 Clause 16(1)(b) of the Bill retains for the Court the power to remove the arbitrator should he fail to properly conduct the proceedings or to use reasonable despatch to proceed with the reference and making the award, where the result would cause “substantial injustice”. Mere procedural errors made in the course of arbitral proceedings would not entitle a party to remove the arbitrator. This ground is not intended to allow a Court to substitute its own view of the law or of procedure with that of the arbitrator. It is intended to cover only those rare cases where an arbitrator so conducts the proceedings in a manner that actually frustrates the object of the arbitration³³. The SAL suggested that this requirement of ‘substantial injustice’ should be set out as a separate discretion to be exercised by the Court in considering such applications. We disagree with this suggestion.

²⁸ Section 17(1) AA

²⁹ Section 18 AA

³⁰ *Chung and Wong v CM Lee* [1934] MLJ 153; [1934] SSLR 190

³¹ In *Turner (East Asia) Pte Ltd v Builders Federal (HK) Ltd & Another (No 2)* [1988] 2 MLJ 502 – Chao J removed the arbitrator ‘for clear evidence of bias’ and for making ‘premature utterances’ and ‘strange unjudicious remarks of one party,..the sort of remarks, if they do come at all, one would expect them to come from an opponent’. In *SS Catalina (Owners) v MV Norma (Owners)* (1938) 61 LLR 360 – where the arbitrator made remarks about Italians and Portuguese were liars..

³² *Pratt v Swanmore Builders Ltd and Baker* [1980] 2 LLR 504 where the court commented that it could be ‘misconduct to fail in important respects to show the elementary skill of an arbitrator’.

³³ The clearest example can be seen in *Hong Huat Development Co (Pte) Ltd v Hiap Hong & Company Pte Ltd* (Unreported 14.8.99) where the arbitrator took more than 10 years after close of hearing to render his award.

The Clause as worded is intended to lay the burden of proving ‘substantial injustice’ as a ground for removal; the objective being to filter out frivolous applications.

2.8.4 Prior to an application for removal being considered by the Court, the applicant must satisfy the Court that any arbitral process of challenge has been exhausted. However it is anticipated that it should be in extremely rare circumstances for the Court to come to a different conclusion with that of an arbitral institution. To further weed out unmeritorious and/or disruptive applications, Clause 16(3) allows the tribunal including the arbitrator against whom the application is made to continue the proceedings while such application for removal is pending. The question as to what would be the effect of an award made if the arbitrator was successful in fact removed by the Court would then be dealt with by the Court ‘as it thinks fit’ when ordering the removal.

2.8.5 *Arbitrator ceasing to hold office*

2.8.6 The Bill provides in Clause 17 for the circumstances in which an arbitrator shall cease to hold office and for the appointment of a substitute in such an eventuality.

2.8.7 The possibility of “resignation” by arbitrators has been considered. In accepting the appointment, an arbitrator has both the privilege, but more significantly, the duty to continue in his office until the termination of the mandate or the arbitral process. In theory therefore, an arbitrator cannot resign unilaterally. It is said however that it is practically very difficult to compel an arbitrator to continue acting if he wishes to resign and as such, a way should be found to enable him to do so. Against this is the argument that taking up an arbitral appointment must be treated as a serious matter. An arbitrator is entrusted with the duty to adjudicate the disputes. His appointment would have incurred some expense to the parties. To allow unilateral resignation, would mean a waste of time and money for them. It may also attract irresponsible persons to accept appointments and when they find the going to be rougher than expected, or not otherwise as rewarding, they would have the liberty to resign unilaterally. Where there are special and genuine reasons for an arbitrator to vacate his office, he should be able to persuade the parties to consent to his doing so. There is therefore no provision made in the Bill for an arbitrator to resign unilaterally.

2.8.8 The Bill therefore provides that an arbitrator who fails to discharge his duty by failing to make progress in the arbitration or to make the award would be removed with the usual consequences.

2.8.9 An arbitrator may however “withdraw from office” if he is challenged as to his qualifications or impartiality under Clause 16. The mere fact of his withdrawal from office does not however imply acceptance of the grounds of challenge.

2.8.10 A new Clause 17(2)(a) was added upon representation of the NUS to cover situations where the arbitrator’s mandate was terminated by the Court on a successful challenge under Clause 15(4).

2.9 *Appointment of substitute arbitrator (Clause 18)*

The original Bill adopted Article 15 of the ML and had woven within it modified provisions taken from Section 27 of the UK Arbitration Act that allows for agreed rules for the appointment of a substitute arbitrator other than by the same method relating to the original appointment. The resulting Clause 18 was thus found to be difficult to be

confusing as it was an uneasy mixture of rules relating to substitute appointments. We decided that the original Clause 18 should be substituted with Section 27 of the UK Arbitration Act, giving parties even more flexibility in deciding how to appoint a substitute arbitrator.

2.10 *Decision by panel of arbitrators (Clause 19)*

The original Clause 19 adopted Article 29 of the ML without reference to the number of arbitrators on the panel. Following representations from the SAL, NUS, SIAC and SI Arb, the Clause was amended by adding the words “In arbitral proceedings with more than one arbitrator,…” before ‘Any decision’ and the words ‘all or’ before the word ‘majority’. The apparent short-coming of this provision is that it operates only in situations of unanimity and majority and would not thus cover a situation where each member of the tribunal holds on to his own views and no majority is achieved. Several options are available³⁴. Some institutional rules have adopted a formula allowing the presiding member’s view to prevail,³⁵ much like the power of an ‘umpire’. If such rules were adopted they would form the agreed procedure upon which the tribunal could validly proceed. This appears to be a pragmatic formula that parties could adopt to break any deadlock in the decision-making process of the arbitration. However to prescribe such a formula as a matter of law may distort the responsibility entrusted and the balance of powers conferred by parties on members of the tribunal. As the decision of the tribunal is final and binding and appeal therefrom is limited, we take the view that parties should have full liberty to decide for themselves how they would want such a situation to be resolved rather than to dictate by law the final decision-making process. The presiding arbitrator may however decide on procedural aspects of the arbitration if the parties or members of the tribunal had so authorised.

2.10.1 *Umpire*

2.10.2 The specific role of the umpire has never been spelt out in the AA. The term can sometimes be confused with the role of a third or presiding arbitrator. Whereas a third or presiding arbitrator participates fully in the arbitration as a member of the tribunal, an umpire has no role in the decision-making process until and unless the members of the tribunal cannot agree on a matter in dispute in the arbitration. It is sometimes unclear whether an umpire is entitled to attend hearings. It is clear however that if he does attend, he may not participate in the discussions³⁶.

2.10.3 The original Clause 21 allows the parties to determine the duties and functions of the umpire. In the absence of such arrangement, the umpire shall attend the hearings and be supplied with documents submitted by the parties but shall take no part in the decision-making process unless and until the other arbitrators who could not agree on the matters in dispute call upon him to do so. Upon taking up the reference the umpire shall have the power to make decisions and orders and awards as if he were the sole arbitrator. If any arbitrator or any party refuses to join in to give notice to the umpire to take up the

³⁴ Parties could abandon the arbitration by consent and proceed to the courts or commence separate arbitration; or appeal to an appellate arbitral tribunal if the institutional rules so provide; or empower the tribunal to make awards on such parts of the dispute as they could agree.

³⁵ See e.g. Rule 28.3 SIAC Rules 1997

³⁶ *Fletamentos Maritimos SA v Effjohn International BV* [1995] 1 LLR 311, Affirmed by CA [1997] ADRLJ 239

reference, they may apply to the court to do so. The court's decision will not be subject to appeal.

2.10.4 SIAC has strongly urged that umpires are a uniquely English institution and unsuitable in the local context. We agree with SIAC and have decided to omit the provision for umpires in this draft. We have not however acceded to SIAC's further representation that a reference to an umpire in an arbitration agreement should be deemed to be a reference to a third arbitrator (see para 2.6.5).

2.11 *Liability of arbitrators (Clause 20)*

2.11.1 There is a generally accepted view that arbitrators enjoy some immunity as they perform quasi-judicial functions³⁷ and adjudicatory functions. In the absence of specific statutory provision or contractual exemptions³⁸ however, there is no certainty that where an arbitrator is engaged by the parties to undertake the task of adjudicating the dispute and fails in his duty or negligently performs his tasks, he would not be liable to the parties.

2.11.2 We adopt the views expressed by the Sub-Committee that recommended the enactment of the immunity provision in the IAA³⁹ for the purposes of our review as well.

2.11.3 Clause 20, which is a mandatory provision, adopts in full Section 25 of the IAA. It grants arbitrators immunity from negligence for acts or omissions done in the capacity of arbitrator and for any mistake in law, fact or procedure made in the course of the arbitral proceedings.

2.11.4 We have considered whether immunity should be extended to arbitral institutions and bodies acting as appointing authorities for arbitrators. No representations were received from SIAC or SI Arb in this regard. However, as the UK Arbitration Act has provided for such limited immunity, we have adopted it and a new Clause 59 is now added.

³⁷ *Sutcliffe v Thakrah* [1974] AC 727; *Arenson v Arenson & Casson, Beckman, Rutley & Co* [1977] AC 405

³⁸ Exemptions are also be provided through rules of arbitral institutions adopted.

³⁹ See Report of the Sub-Committee on Review of Arbitration Laws (1995) at paras. 53-58. The relevant extract is reproduced.

"54. The users of arbitrations who are paying for the services of an arbitrator, would like to have an avenue of redress if the arbitrator fails to apply sufficient care and attention to their case or who does not in the arbitrator's view, adhere to proper rules of procedure, or fails to display the appropriate level of skill expected of him....

55. The traditional English position based on judicial decisions was that arbitrators were akin to the judiciary and enjoyed the same immunity as judges. This position has sometimes been questioned. There is no English legislation which directly addresses the issue of arbitral immunity. While judicial decision still favours immunity the extent of immunity appears to be limited to negligence by the arbitrators in performing their duties. ...

56. In the United States the doctrine of judicial immunity from civil liability is rooted in common law and public policy considerations. U.S. Courts extended this immunity to arbitrators and arbitral institutions for all actions or omissions undertaken in fulfilling their duties. ...

58. The Committee considered also the various arguments for and against granting immunity for arbitrators. There is in the Committee's view a manifest preponderance of factors in favour of granting arbitral immunity. A clear policy on this issue is important to encourage and build up a core of competent professionals in dispute resolution. Qualified people would be reluctant to take up these challenges should they be exposed to such liability. There is also a public policy argument that it is not desirable for persons acting in a judicial capacity to be liable to suit as this will only encourage litigation. **The Committee thus recommends that there be specific legislation providing for immunity from liability for arbitrators.** The Committee feels however that such immunity should not extend to cases where the arbitrator has wilfully misconducted himself or inordinately caused delay in the arbitration."

2.12 Doctrine of separability and kompetenze-kompetenze (Clause 21)

2.12.1 Clause 21 adopts Article 16 of the ML and comprises 2 distinct concepts of separability and kompetenze-kompetenze.

2.12.2 The doctrine of separability has evolved to save the continuing application of arbitration clauses in contracts which could have been terminated, whether by breach repudiation or frustration, rescission or avoided by reason of illegality. By this doctrine, an arbitration clause in a commercial contract is treated as a separate and distinct agreement with collateral obligations and as such would survive the termination or avoidance of all the primary obligations assumed under the underlying contract. The doctrine takes on a pragmatic instead of a logical reasoning approach and is well known and accepted in international arbitration. It has also been given judicial recognition in several English cases⁴⁰. An arbitration clause in a contract thus constitutes a self-contained contract collateral or ancillary to the underlying contract⁴¹ and is capable of independent existence.

2.12.3 Singapore courts have however not fully embraced this doctrine⁴². Some had tended toward taking the logical reasoning route quite unaware of the development of this doctrine⁴³. It is therefore necessary that the doctrine be set out in clear language. In relation to international arbitration, this doctrine is given statutory expression in the International Arbitration Act⁴⁴.

2.12.4 Clause 21(2) and (3) sets out clearly the doctrine of separability adopting the concept that an arbitration clause in a contract is an independent agreement separate from the underlying commercial contract such that even if the underlying commercial contract was held to be invalid, the arbitration clause survives such invalidity. Representations received from various parties all supported the introduction of Clause 21.

⁴⁰ *Wilson (Paul) & Co A/S v Partenreederei Hannah Blumenthal*, The 'Hannah Blumenthal' (HL) [1983] 1 All ER 34. See also *Heyman v Darwins Ltd* [(1942) 72 Lloyds L Rep 65 (HL)] – While the *ratio* of this case is the upholding of the separability doctrine although the *dicta* of Viscount Simon and Lord Macmillan on competence-competence concept had been given greater prominence and had in fact caused certain degree of confusion between the two. The Court of Appeal in *Harbour Assurance v Kansa General International Insurance* [1993] 1 Lloyd's L Rep 455 (CA) was able to distinguish the *ratio* from the *dicta* in *Heyman v Darwin* and upheld the separability doctrine. There is some doubt in England as to the extent of application of this doctrine to cases where the contract is void *ab initio*.

⁴¹ *Bremer Vulcan Schiffbau und Maschinesfabrik v South India Shipping Corporation* [1981] 1 Lloyd's L Rep 253 (HL) per Lord Diplock.

⁴² In *Arden Shipping v Owners of the 'Sungei Bulan', Standard Charterer Bank (interveners)* [1983] 2 MLJ 377 (Rajah J), the court suggested that the test as to whether with the termination of the contract, the arbitration clause fell, should be to consider whether the contract was determined by something outside itself or was it terminated by something arising out of the contract. In the case of the former, the arbitration clause would survive but if it was the latter, the arbitration clause would fall. With respect, though attractive, the test is imprecise and would lead to grave uncertainty.

⁴³ In *New India Assurance Co v Lewis* [1967] 1 MLJ 156, the issue as to whether or not an insurance policy was properly renewed was held by Wee CJ to be not arbitrable under the arbitration clause of the original policy as it was said to have lapsed. This decision still appears to have some following - see *Ian Leonard Jackman v Culifrance Furniture Pte Ltd* (Unreported, 30 Sep 1992, Rubin JC) and *Lim Pitt Ping v The People's Insurance Co and Anor* (Unreported, 12 May 1997, Kan J).

⁴⁴ Article 16(1) Model Law, IAA '...The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.'

2.12.5 *Kompetenze-kompetenze*

2.12.6 The concept of *kompetenze-kompetenze* relates to the power of the arbitral tribunal to rule on its own jurisdiction. It is a necessary corollary to the doctrine of separability. Some English courts have recognised this doctrine, but some do not consider it proper for an arbitral tribunal to do so. This concept is controversial and is probably still in varying stages of evolution in different jurisdictions⁴⁵. Singapore courts have had no opportunity in recent years to consider this issue. Older decisions appear to adopt the position that the arbitral tribunal has no jurisdiction to determine its own jurisdiction⁴⁶. In the absence of legislation, the uncertainty could only be remedied by adopting procedural rules⁴⁷ which grant such a power to the tribunal.

2.12.7 The advantage of empowering the tribunal to decide on issues of jurisdiction is the avoidance of delay and expense. If only the courts could decide on such issues, it would mean that a party could deliberately delay the arbitral proceedings by making spurious applications to the courts indefinitely to challenge the jurisdiction of the tribunal.

2.12.8 The concept is fully set out in Article 16 of the ML and adopted in the IAA. The Bill adopts this position (see Clause 21) and empowers the tribunal to rule on its own jurisdiction including questions relating to the existence and validity of the arbitration agreement. However as the issue of jurisdiction goes directly to the root of arbitration, the Bill provides for an appeal on the tribunal's decision upholding jurisdiction. Thus, the tribunal though competent to decide, is not the final arbiter on its own jurisdictional matters⁴⁸. Consistent with the concept of separability, a decision by the tribunal that the underlying contract is null and void will not affect the validity of the arbitration clause. The clause was recast to reflect a closer adherence to Article 16 of the ML.

2.12.9 To further prevent the abuse of the right to challenge arbitral jurisdiction and thus causing unnecessary delay, Clause 21 sets out the time within which such application should be made and allows the tribunal to either make its ruling as a preliminary issue or as part of the final award. Where a decision upholding jurisdiction is made by the tribunal, the tribunal is also empowered to continue with the arbitration and make an award even if there is a pending appeal against upholding its arbitral jurisdiction.

2.12.10 The SAL suggested that Clause 21(4) and (6) should be combined and a single timeline be drawn for challenges to arbitral jurisdiction and pleas of the tribunal having exceeded the scope of authority. It should be noted however that Clause 21(4) is intended

⁴⁵ In England, the approach of the courts appear to be that arbitrators may rule on their own jurisdiction but that decision would not be final. Parties are still at liberty to appeal to the courts for a final determination. See *Harbour Assurance (UK) Co Ltd v Kansa General International Insurance* [1993] 1 Lloyd's L Rep 455 (CA). One writer, Prof Phiroze K Irani in "International Commercial Dispute Resolution Through Arbitration - I" *Asia Business Law Review*, January 1993, 9 at p. 17 said that " ...if an arbitration agreement is part of the contract, English arbitration law does not allow an arbitrator to determine the existence or validity of the contract." With respect this is probably a misstatement of the English position.

⁴⁶ In *New India Assurance Co v Lewis* [1967] 1 MLJ 156, Wee CJ said " ...if the arbitrator found that there was no contract in existence at all and no right to sue on the policy..., he would be deciding that the arbitration clause which founded his jurisdiction never existed and therefore he never could have had any jurisdiction to deal with the matter." See also *Ian Leonard Jackman v Culfrance Furniture Pte Ltd* (Unreported, 30 Sep 1992) Rubin JC took the view that once there is an issue as to the jurisdiction of the arbitrator or the existence of an arbitration agreement, the arbitrator cannot decide that issue.

⁴⁷ The SIAC Rules and UNCITRAL Rules could be adopted by parties to fill this need.

⁴⁸ Note an appeal is permissible only if the tribunal upholds its own jurisdiction. If the tribunal holds that there is no arbitral jurisdiction, the matter rests there with no appeal.

to deal with challenges of the tribunal's initial jurisdiction such as the existence of an arbitration agreement or validity of its appointment or constitution. These should therefore be raised early in the proceedings not later than in the statement of defence. Clause 21(6) however deals with pleas by a party (whether a claimant or respondent) that the tribunal may have exceeded its authority. Such matters complained of could arise at anytime in the course of the arbitration and would be allowed to be raised as and when they arise. It is therefore not appropriate to combine sub-clauses (4) and (6) as suggested.

2.12.11 NTU suggested that the Bill should prescribe the consequences for failure to raise the issue of jurisdiction in time. We however take the view that if such pleas are not in fact made in time, they could not be so raised. To prescribe specific consequences may in fact limit the remedies the tribunal may otherwise have.

2.13 *General duties of tribunal (Clause 22)*

2.13.1 While parties and arbitrators may always agree on the procedure relating to the conduct of the arbitration, certain basic principles must nevertheless be adhered to. The Bill sets out in simple terms the general duty of the tribunal⁴⁹ in the conduct of the arbitration viz. to act fairly, impartially and giving each party a reasonable opportunity⁵⁰ to be heard and to adopt procedures suitable for the particular case. These principles are common to all arbitrations. It is provided as a reminder to arbitrators of their duties. In adopting these principles in Clause 22 we are conscious that it may be seen as an invitation to parties dissatisfied with an award, to launch attacks on the tribunal with allegations of breaches of such duties. However as the grounds for challenging an award set out in Clause 48 and for appeal against an award set out in Clause 49 are comprehensive, it is not anticipated that this pronouncement of the duties of the tribunal would avail the parties much assistance if they are unable to prove those grounds set out in Clauses 48 and 49.

2.13.2 SIArb commented that the original Clause 24(b) (now Clause 22) may be difficult to reconcile with Clause 23(2). We decided to delete Clause 24(b) and recast the clause to follow closely the wordings of Article 18 of the ML to avoid possible conflict with Clause 23(2).

2.14 *Rules of procedure (Clause 23)*

2.14.1 The conduct of the arbitration lies first in the hands of the parties and it is firstly the parties' right to determine the type of procedure they consider appropriate for themselves. These procedures however must accord with the general duties of the tribunal as set out in Clause 22, e.g., the procedures must not be such as would allow the arbitrator to act unfairly or would deprive a party of the reasonable opportunity to be heard. It will of course be extremely unlikely that parties would agree to such procedures. Where the parties fail to agree or did not agree on the procedure, the tribunal may then, unless provided for under another provision in the Bill, adopt such procedures as it considers appropriate. Whatever is then adopted by the tribunal must be in accordance with the principles set out in Clause 22.

⁴⁹ This clause is adopted from the UK Arbitration Act 1996

⁵⁰ The phrase used in Article 18 is "full opportunity". The term "reasonable" in Clause 22 of the Bill is adopted from s. 33 of the UK Arbitration Act 1996. The framers of the English Act thought that this would remove any suggestion that a party could take as long as he wants to the extent of being unreasonable.

2.14.2 Clause 23 confers on the tribunal the power to consider the evidence before it without having to comply with any rules of evidence⁵¹, with full power to determine ‘admissibility, relevance, materiality and weight’.

2.15 *Filing and service of statements, documents (Clause 24)*

2.15.1 In an arbitration under institutional rules, the procedure for the exchange of ‘pleadings’ and documents would normally be prescribed under those rules. In *ad hoc* arbitration, the parties or the tribunal would often agree to a time-table. Lawyers prefer the certainty of rules and procedure. The arbitral process must however remain flexible and within the control of the parties and the tribunal. The Bill seeks to preserve this. Clause 24 spells out the basic essential information that parties to arbitration should provide to the other in writing during the initial stage of the arbitration. This ensures that a party in arbitration knows in writing the claim he is to face or the defence he is expected to meet, as well as the evidence which may be raised in support. While parties may agree on some other required elements of such statements, there is no liberty to dispense with written statements of claim and defence. This requirement is consonant with the duty of the tribunal under Clause 22 to ensure that the parties are given a reasonable opportunity to present their case. The tribunal is given the power to refuse any proposed amendment if the delay in making the amendment is such as would render the amendment inappropriate.

2.15.2 The Bill makes no express reference to counterclaims as it is intended that any reference to a claim would apply *mutatis mutandis* (with the necessary modifications) to a counterclaim.

2.15.3 SIAC has suggested that this provision be deleted as these matters should be properly dealt with by institutional rules or directions from the tribunal. We agree that where an arbitration is subject to institutional rules, those rules would apply by reason of agreement. However Clause 24 is intended to cover primarily *ad hoc* arbitrations and to set the minimum initial documents which need to be furnished. As Clause 24 allows the tribunal to determine the time for submission of these documents and the extensions thereof, the tribunal’s power is thus not in any way disturbed.

2.15.4 SI Arb’s suggested that Clause 24 should include provisions for further and better particulars and interrogatories⁵². We believe that such proceedings are better suited for court litigation processes and should be discouraged in arbitration. It would be inappropriate to include them in this Bill. We have also recast Clause 24(2) and (3) as one, following Article 23 of the ML.

2.16 *Holding hearings (Clause 25)*

2.16.1 Arbitration may proceed on to an award without an oral hearing. These ‘documents only’ arbitrations are not uncommon. Again the Bill gives the parties the first and final say in this regard. In the absence of agreement, Clause 25 allows the tribunal to decide whether any oral hearing needs to be held and if so whether the hearing shall be for the

⁵¹ Section 2, Evidence Act (Cap.97) provides that that Act does not apply to arbitration proceedings.

⁵² It is noted that some arbitrations shall follow the litigation practice of serving ‘pleadings’ with terms like ‘Points of Claim’ and ‘Points of Defence’ and following that the discovery process. The Current practice is to serve full Statement of Case or Defence where facts, law, evidence are fully set out together with documents in support annexed. If parties faithfully follow this practice, it is rare that further and better particulars or interrogatories would be needed.

presentation of evidence or for oral argument. If a party requests for an oral hearing, the tribunal is obliged to hold the hearing. To prevent any party from abusing this power for avoiding or delaying the making of an award, Clause 25 only permits the party to do so if there was no earlier agreement for dispensation of hearing.

2.16.2 A party to the arbitration must be given sufficient advance notice of any intended hearing or meeting of the tribunal for the purposes of carrying out inspection of goods or other property or documents. This is a fundamental right of any party based on the principle of fair play and justice. Clause 25(3) sets out only the requirement for notice. It does not specify whether it is the tribunal or which party should be charged with notifying the other nor does it set a particular minimum time to constitute “sufficient advance notice”. In practice, the tribunal or the presiding arbitrator or in the case of an institutional arbitration, the secretariat would normally give such notice. In practical terms however, a party who wishes to enforce any award or rely on any decision to be made by the tribunal must ensure that the other parties be notified of any such intended hearing or meeting even if the tribunal or the institution fails to do so.

2.16.3 The SIArb commented that this should be amended to require advance notice to be given for all meetings of the tribunal. We see no requirement for parties to be notified for the tribunal’s own meetings other than those specific instances of inspection as set out.

2.17 *Consolidation of arbitral proceedings, concurrent hearings (Clause 26)*

2.17.1 The doctrinal basis of arbitration is consensual submission by the parties to the agreed tribunal. The Court therefore cannot order a third party to be joined or consolidate the arbitrations without the consent and agreement of all the parties involved⁵³. This is admittedly one of the disadvantages of arbitration. There are many practical reasons for consolidation of arbitral proceedings such as avoidance of repetitive hearings and reproduction of similar evidentiary documents, consistent findings, a ‘one-stop’ resolution process, all of which would lead to savings in costs and time. The arguments against consolidating arbitral proceedings are however more fundamental. If a third party is allowed into an essentially private dispute resolution process against the wishes of one of the parties, there is a real danger of compromise of confidentiality and possible prejudice. Similarly there can be no legal basis to justify ordering or adding another party to an arbitral proceeding for which they had never agreed to submit to. We are therefore of the view that allowing consolidation or concurrent hearing or the adding of parties otherwise than with the consent of all the parties would seriously negate the principle of party autonomy and compromise the fundamental bases of arbitration.

2.17.2 Clause 26 thus allows consolidation or concurrent proceedings only with consent of all concerned. Where there is no such powers conferred by the consent of all the parties, the tribunal have no power to make such orders. The Court too would have no power to make such an order.

2.18 *Appointing experts (Clause 27)*

Clause 27 adopts Article 26 of the ML to provide the tribunal with a useful power to appoint experts on specific issues before it. Failure to allow a party to comment on a tribunal-appointed expert’s report or to adduce contrary evidence in answer had been held

⁵³ *Oxford Shipping Co. Ltd v Nippon Yusen Kaisha, The Eastern Saga* [1984] 2 LLR 373

to be a denial of the ability to present his case⁵⁴. To ensure that parties be given the opportunity to test any views or points taken by a tribunal-appointed expert, Clause 27 also provides for a party upon request to put questions to the expert or to present other expert witnesses to testify on the points in issue. This is a non-mandatory provision.

2.19 *General powers of the tribunal (Clause 28)*

2.19.1 Clause 28(1) restates the existing law which allows parties to clothe the tribunal with such powers as they may so agree⁵⁵. Such powers may be conferred by the consensual adoption of institutional rules or by conferment at the onset of the arbitration proceedings⁵⁶.

2.19.2 Increasingly parties in arbitration expect (quite rightly) that the tribunal be able to deal with all matters in dispute including any interlocutory procedural matters and to conduct the proceedings swiftly. Involving the Court in interlocutory matters during the course of the arbitration often means the element of confidentiality may be compromised. It introduces into the arbitral process some degree of judicial intervention which tends to impede the progress of the arbitration. The powers which these new provisions seek to confer on the tribunal are extensive. It represents a recognition that the arbitral process should be controlled by the tribunal. Many such powers which were hitherto only to be exercised by the Court, are now also conferred on the tribunal viz. making orders relating to security for costs, the discovery of documents and interrogatories, the preservation of and interim custody of any evidence, ordering the taking of samples and the preservation of property which is the subject matter of the dispute.

2.19.3 The power to order security for costs has for a long time been withheld from the tribunal. The usual grounds to justify such an application are the financial impecuniosity of the claimants⁵⁷ or the fact that the claimant is not resident within the jurisdiction⁵⁸. The usual sanction in court proceedings where a party fails to furnish security for costs is that those proceedings would be stayed. Such a sanction has been criticised as being a fundamental impingement of a party's right to arbitrate in accordance with the consensual agreement.⁵⁹ It is therefore necessary that in arbitral proceedings such a power should be exercised only in exceptional circumstances and not be made as a matter of course. The parties must be taken to have accepted the risks when entering into an agreement with the other. The Bill provides specifically that such orders should not be made on the ground only that the claimant is foreign viz. ordinarily resident outside Singapore or is incorporated or whose central management and control is outside Singapore⁶⁰. Financial impecuniosity remains a valid ground. Even so, there is sufficient judicial support for the position that the order should be made only after considering all the circumstances of the

⁵⁴ *Paklito Investment Ltd v Klockner (East Asia) Ltd* [1993] 2 HKLR 39. It was said that the "experts' report were delivered too late and the award was issued too soon".

⁵⁵ There is no express limit as to the extent and type of powers parties could confer on the tribunal. The only check would probably be illegal acts or act which may be contrary to public policy.

⁵⁶ E.g. agreed by parties at the preliminary meetings.

⁵⁷ S. 388(1) Companies Act (Cap.50). See *Sembawang Engineering Pte Ltd v Priser Asia Engineering Pte Ltd* [1992] 2 SLR 806; *Gateway Land Pte Ltd v Turner (East Asia) Pte Ltd* [1988] 1 MLJ 416; *Coppee Lavalin NV v Ken-Ren Chemicals and Fertilizers Ltd* [1995] 1 AC 38 (HL); *Bilia AB v Te Pte Ltd & Ors* (OS 832/98; High Court. Unreported 17.4.99)

⁵⁸ O.23 RC 1996

⁵⁹ *Coppee Lavalin NV v Ken-Ren Chemicals and Fertilizers Ltd* [1995] 1 AC 38 (HL) per Lord Mustill.

⁶⁰ Clause 28(3) Bill

case and must in all cases not operate oppressively⁶¹. The wording of Clause 28(3) is adapted from Section 38, UK Arbitration Act 1996 and Order 23 Rule 1 of our Rules of Court using the term ‘central management and control’⁶² as opposed to the ‘place of business’.

2.19.4 SIAC suggested the deletion of the proviso relating to foreign parties set out in Clause 28(3) as the Bill deals with parties who are *ex hypothesi* (by assumption) locals. While this may generally be true, the Bill also covers arbitration involving foreign parties where parties have opted into the domestic regime.

2.19.5 NUS suggested that Clause 28(3) should express guidelines as to when security for costs should be ordered. We are however of the view that this is best left to the discretion of the tribunal and eventual development of the law by the courts.

2.20 *Tribunal’s powers in the event of default by party (Clause 29)*

2.20.1 Unless contractually provided for or in the rules adopted by the parties to arbitration, the arbitral tribunal does not, under the existing Arbitration Act, have powers to deal with a defaulting party. Section 32 of the existing Arbitration Act requires a party or the tribunal to apply to the Court for specific extension of powers to deal with instances of default. Courts have hitherto been cautious in clothing the tribunal with these extended powers⁶³. To ensure the expeditious conduct of the proceedings and in tandem with the additional powers of the tribunal to make orders and directions in interlocutory matters under Clause 28, it is expedient to empower the tribunal to deal with situations of default in complying with such directions and orders without the need to seek specific extension of such powers from the Court.

2.20.2 Where in court proceedings, a prolonged delay in prosecution of the claim could invite an application from the defendant to the court to dismiss the case for want of prosecution, the same has been held to be not possible in arbitral proceedings⁶⁴. This could in some circumstances operate unfairly against the respondents in arbitration. To address this situation Clause 29(2)(a) and (3) provides that the tribunal may terminate the proceedings or dismiss the claim if the claimant makes default in submitting his case or inordinately and inexcusably failed to prosecute his claim. Such provisions emphasize the claimant’s duty to act with promptitude in the prosecution of its claim. In addition, no party may now ignore the tribunal’s directions with impunity. Clause 29(2)(b) and (c) empower the tribunal to proceed with the arbitration and make an award should a respondent fail to submit the defence or any party fails to appear or tender any evidence at the hearing.

2.20.3 SIArb highlighted that in Clause 29(2)(a) the power of the tribunal on failure by the claimants to file their case resulting in a termination of the proceedings may not result in *res judicata* as would be the case in Clause 29(3). The distinction is deliberate. In a

⁶¹ *Gateway Land Pte Ltd v Turner (East Asia) Pte Ltd* [1988] 1 MLJ 416

⁶² The term ‘ordinarily resident’ as applied to corporations have been judicially considered and the test of ‘central management and control’ was consistently applied. See *Re Little Olympian Eachways Ltd* (1994), *The Times*, July 29; *De Beers Consolidated Mines Ltd v Howes* [1906] AC 455 at p 458; *Unit Construction Co Ltd v Bullock* [1906] AC 351 at p 363, 365

⁶³ *Antara Koh v Govt of Singapore* [1997] 2 SLR 167; *Waverly SF Ltd v Carnaud Metalbox Engineering Plc* [1994] 1 LLR 38

⁶⁴ *Bremer Vulcan Schiffbau und Maschinentabrik v South India Shipping Corporation* [1981] 1 Lloyd’s L Rep 253 (HL)

situation where the claimants fail only to file the case no *res judicata* would entail whereas if a claimant has by inordinate and inexcusable delay failed to prosecute the claim causing prejudice, the tribunal may dismiss the claim.

2.21 *Court's supportive powers (Clauses 30 & 31)*

2.21.1 The Court's power to issue subpoenas to compel the attendance of witnesses at arbitration proceedings to give oral evidence or produce documents is retained.

2.21.2 The Court's power to make directions in relation to a pending arbitration under Clause 31 is intended to be supportive only and should not be exercised if the effect is to circumvent the otherwise legitimate role of the tribunal or of any arbitral institution under which the arbitration is being conducted.

2.21.3 Clause 31 provides an alternative avenue for parties to apply to the Court if applications for interlocutory relief may not be conveniently made to the tribunal or if it is more expedient to do so in court. It is not an appeal or review process against orders or directions already made by the tribunal. In fact, Clause 31 contemplates that matters dealt with by the Court under this provision are to be treated as provisional only. Such orders shall lapse if the tribunal subsequently makes an order relating to the matter. Clause 31(2) is adapted from Section 44(6) of the UK Arbitration Act 1996 but is made wider in that upon the tribunal's order on the subject matter to which a Court's order relates, the latter would cease to have effect. The pre-emptive powers relating to the granting of injunctions, Mareva injunction, and Anton Piller orders in domestic arbitration have been deliberately reserved for the Court.

2.22 *Applicable laws (Clause 32)*

2.22.1 Clause 32 recognises that the law applicable to the substance of dispute shall be that which the parties have chosen⁶⁵. If there is no specific choice of law in the contract or agreed by the parties, the tribunal is directed to determine the applicable law based on conflict of law rules⁶⁶.

2.22.2 The original Clause 35(2) made reference to the determination by the tribunal of the applicable law based on the conflict of law rules '*which it considers applicable*'. The SAL commented that this may give rise to the possible argument that the tribunal could apply some conflict of law rules other than that of Singapore in determining the applicable substantive law. We agreed and the words '*which it considers applicable*' are deleted. Courts have traditionally frowned upon arbitrators making awards based on some unknown notions of justice⁶⁷. In one local case⁶⁸, the Court was asked to refuse enforcement of a Chinese award on the basis that the award did not state the law upon which it was made. While not acceding to the request, the Court appeared to uphold the

⁶⁵ Consistent with *Vita Food Products Inc v Unus Shipping Co* [1939] AC 277.

⁶⁶ *Compagnie d'Armement Maritime SA v Compagnie Tunisienne de Navigation SA* [1971] AC 572 per Lord Wilberforce; [1968] 1 WLR 406; The '*Castle Gate*' [1989] 2 LLR 383; *Minousti Shipping Corp v Trans Continental Shipping Services Pte Ltd* [1971] 2 MLJ 5, *Woh Hup (Pte) Ltd v Property Development Ltd* [1991] 3 MLJ 82.

⁶⁷ Per Megaw J in *Orion Compania Espanola De Seguros v Belfort Maatschappijvoor Algemene Verzekering* [1962] 2 Lloyds' L Rep 257 at p 264 - "arbitrators must in general apply a fixed and recognisable system of law, ...they cannot be allowed to apply some different criterion such as the view of the individual arbitrator or umpire on abstract justice or equitable principles."

⁶⁸ Re *Hainan Machinery Import & Export Corp v Donald & McArthy Pte Ltd* [1996] 1 SLR 34

award on the basis that the tribunal's decision was based on Chinese law. English courts have dealt with many 'equity clauses' in reinsurance contracts⁶⁹ where the tribunal was directed to disregard the law and to decide matters in dispute based on 'an equitable basis'. They have invariably held that such clauses merely free the tribunal from the strict formalistic or technical rules of interpretation but not to disregard the substantive law.

2.22.3 Clause 32(3) will permit the tribunal to decide the dispute (if the parties so agree) "*in accordance with such other considerations as are agreed by them or determined by the tribunal*". This is intended as a simplified restatement of the Latin description of awards made *ex aequo et bono* and the French phrase *amiable compositeur* as used in Article 28 of the ML. It allows a tribunal to decide matters in dispute in accordance with considerations other than based on law. Similarly agreements which allow the tribunal to decide on such extra-legal criterion would be enforceable.

2.23 Awards on different issues (Clause 33)

2.23.1 To cater for complex cases where issues raised may mean protracted and expensive hearings, Clause 33 allows the tribunal, in the absence of agreement to the contrary, to make awards on certain specific issues at different times. This empowers the tribunal to identify and deal with issues it deems critical in priority over others. It effectively allows the tribunal to manage the case in a manner it thinks fit taking into consideration factors of time and costs savings but always without compromise on the need to ensure that parties are treated fairly. The parties may if they so wish, retain case management by agreement.

2.23.2 The wordings of Clause 33 are adapted from section 47 of the UK Arbitration Act 1996. The omission of the expression 'provisional awards'⁷⁰ is deliberate as the Bill contemplates that all awards enforcement of which is sought (including interim and partial awards) are to be final in nature.

2.23.3 SIAC raised a query as to whether the words "different times" are necessary. SIAC is of the view that awards may be made on different issues whether or not at different points in time. We however hold the view that it is useful to retain these words. These words are also found in section 47 of the UK Arbitration Act and are intended to allow an arbitral tribunal to make interim awards during the course of the proceedings.⁷¹ The reference to "different times" may be necessary so as to avoid any controversy on whether an interim award has a final and binding effect.⁷²

⁶⁹ *Eagle Star Insurance Co Ltd v Yuval Insurance Co Ltd* [1978] 1 Lloyd's L Rep 357 (CA); *Home Assurance Co & Anor v Administratia Asigurarilor de Stat* [1983] 2 Lloyd's L Rep 674; *Deutsche Schachbau-und Tiefbohrgesellschaft mbH v R'As al-Khaimah National Oil Co* [1987] 3 WLR 1023 (CA). In *Home and Overseas Insurance Co Ltd v Mentor Insurance Co (UK) Ltd* [1989] 3 All ER 74 (CA), the court said "an arbitration clause which purported to free the arbitrators to decide without regard to the law and according to, for example, their own notions of what would be fair would not be a valid arbitration clause; the clause did not do any such thing; the clause did no more than give the arbitrators liberty to depart from the ordinary or literal meaning of the words used in the clause"

⁷⁰ Section 39 UK AA was not adopted.

⁷¹ DAC Report on the Arbitration Bill, paras 226 to 233.

⁷² See also para 2.33.2 which discusses clause 44 of the Bill on the finality of all awards made by an arbitral tribunal.

2.24 Remedies (Clause 34)

2.24.1 The tribunal's power to grant reliefs and remedies in arbitration is spelt out in Clause 34. By it the tribunal is given the same powers as the High Court if the dispute had been the subject matter of proceedings in court. The original Clause 34 was taken from paragraph 8 of the First Schedule of the existing Arbitration Act which restricted an arbitral tribunal from ordering specific performance relating to land and interests in land. This position was also preserved in UK under their 1996 Act. SIAC and LRCC recommended that this restriction be removed. We agree that there is no reason for this restriction and its removal will bring the position on the tribunal's power to be in line with the position under the IAA.

2.25 Interest (Clause 35)

2.25.1 The imposition of non-contractual interest in addition to sums awarded is quite separate from the general relief a tribunal may order. In the absence of specific statutory power or agreement, it is generally accepted that the tribunal may not have any power to award interest⁷³. Clause 35 empowers the tribunal to award interest on all sums awarded to any party, including interest on a compound basis. This allows the tribunal the fullest discretion to determine the interest rate, the period (up to the date of the award) and the basis for its computation. Interest, as a specific available remedy is intended to be compensatory in nature and not punitive.

2.25.2 Post-award interest on sums awarded carries with it the same interest as from the date of the award as a judgment of the court.

2.26 Extension of time to make award (Clause 36)

2.26.1 Where by agreement of the parties or by the applicable rules adopted by the parties in the arbitration, the tribunal is to make the award in the arbitration within a specified time and the tribunal fails to do so, the tribunal would be technically *functus officio* (something which once had life but now has no virtue whatsoever) and an award made late may be set aside⁷⁴. In such event, the parties may have to recommence another arbitration or seek relief elsewhere. Such situations although rare would gravely prejudice the rights of the parties, in particular the party in whose favour the award was given. The existing section 15 of the AA permits the Court to extend time without qualification.

2.26.2 Clause 36 qualifies the existing position by requiring that the arbitral processes for extension of time be first exhausted such as, by the tribunal seeking the agreement of the parties or by application to the administering body if the arbitration is an institutional arbitration. The Court is also directed not to make an extension of time as a matter of course but to do so only if substantial injustice would otherwise ensue should extension be refused. As to what factors are to be considered and how the justice of the matter should be balanced, these are within the province of the Court.

⁷³ There is however a local decision which appears to take a contrary view. See *Ahong Construction (S) Pte Ltd* [1995] 1 SLR 548, Lai J said "implicit in a reference or submission to arbitration that parties have conferred power on the arbitrator to award interests as if the matter in difference were litigated in a court of law."

⁷⁴ *Ian MacDonald Library Services Ltd v PZ Resort Systems Inc* [1987] 14 BCLR (2d) 273, BC CA set aside award made a few months after time allowed.

2.27 *Award by consent (Clause 37)*

2.27.1 Where in the course of the arbitral proceedings the parties settled the matters in dispute, the arbitration would be terminated. The terms of settlement may (not mandatory) be embodied in a consent award and be enforceable as an award. This saves the party in whose favour the award is made the need to prove its claims afresh or sue on the settlement agreement should default be made in the performance of the agreed terms. Clause 37 empowers the tribunal to make an award but the tribunal may refuse to do so such as if there is reason to believe that the award was intended to or may mislead third parties.

2.28 *Form and contents of award (Clause 38)*

2.28.1 No specific form of award is to be prescribed. Clause 38 requires that the award be in writing and be signed by the sole arbitrator. Where the tribunal consists of more than one arbitrator, the award is to be signed by all or a majority of the arbitrators. This formula allows a dissenting arbitrator to state his dissent or his alternative views or position. Where the award is signed only by a majority of the arbitrators, the reason for the omitted signature must be stated. The date and place of arbitration must also be stated.

2.28.2 The existing provision in the Arbitration Act does not oblige the tribunal to state its reason for its decision unless one of the parties so requests before the award was made⁷⁵. To assure parties that the tribunal's decision is thought through, reasons for the award are required to be given under Clause 38(2). Parties may however dispense with reasons in the award. Where an award is based on agreed terms, reasons are also not required to be given.

2.28.3 The making of an award is only complete when the award is communicated to the parties. This simple act of delivering the award to the parties crystallizes the parties' rights and liabilities as set out in the award. The process of enforcement and execution may follow if the terms of the award are not complied with. Clause 38(3) requires that a signed copy of the award be given to each of the parties.

2.28.4 Following the representation by NUS, a new sub-clause (4) was added to make clear that the award shall be deemed to be made at the place of arbitration.

2.29 *Costs of arbitration (Clause 39)*

2.29.1 The costs generally incurred by parties in the arbitration such as the fees of the tribunal, the fees of the administering institution, the costs of legal representation and work incidental to the preparation for the prosecution or defence of the claims in the arbitration are to be dealt with by the tribunal in its award. If the tribunal fails to address the issue of who should bear, and if costs is to be apportioned, in what proportion, then any party may within 14 days of the delivery of the award (or such time as the tribunal may allow), apply to the tribunal to amend the award to include such directions. The power to award costs and determine who and in what proportion it should be borne is a discretionary power which rests with the tribunal.

⁷⁵ S 28(5) and (6) AA

2.29.2 The term ‘cost of the reference’ is used as commonly understood to be the costs and expenses of a party (other than the costs of the award) in the preparation and conduct of the arbitration e.g. fees of counsel (or representative), expert witnesses, travelling expenses of witnesses, or advisers consulted. The term ‘cost of the award’ is generally understood as the costs and expenses incurred in administering the arbitration including the fees and expenses of the tribunal, costs of room hire, transcription and so on but not the legal costs incurred by the parties.

2.29.3 Clause 39 retains the existing provision that in a pre-dispute arbitration agreement, a provision that each party bears its own or any part of his costs of the reference whatever the outcome of the arbitration is to that extent void. Such arrangements are however permissible where the arbitration agreement is entered into after the dispute has arisen. The rationale behind this prohibition may need to be re-visited.

2.30 *Fees of arbitrator (Clause 40)*

2.30.1 The services of an arbitrator are rendered to the parties in the arbitration. Fees payable to the arbitrators are therefore the joint and several responsibilities of the parties to the arbitration and are not dependent on who had initially appointed or nominated them. Where the amount of fees claimed by the arbitrators is disputed, any party may have the fees taxed by the Registrar of the Supreme Court.

2.30.2 A tribunal may withhold delivery of an award pending payment of its fees. Where however the amount of the tribunal’s fees is disputed and a party applies for taxation before the Registrar, the Court may order the delivery of the award to the parties upon payment of the amount claimed into Court pending taxation. Clause 44 also applies to arbitral institutions whose fees are disputed by the parties.

2.31 *Solicitor’s lien (Clauses 41 & 42)*

Clause 41 is a re-enactment of the existing section 38 of the Arbitration Act and preserves a solicitor’s charge over property or costs recovered in arbitration for solicitors’ costs. Clause 42 provides for the application of section 117 of the Legal Profession Act (Cap.161) to this Bill in respect of the solicitor’s power to charge property recovered or preserved in the proceeding with the payment of his costs.

2.32 *Additional award and corrections (Clause 43)*

2.32.1 The existing provision under the Arbitration Act empowers the tribunal to correct ‘clerical mistakes’ or ‘error arising from any accidental slip or omission’⁷⁶. Such a power is similar to the power of the court given under the ‘slip rule’ to correct accidental mistakes⁷⁷. Clause 43 adopts the text of Article 33 of the ML⁷⁸. The power to correct an award relates to both clerical mistakes and such other statements or mis-statements made which were never intended by the tribunal. Such errors would include mistakes arising out

⁷⁶ Section 13(b) Arbitration Act. Goff LJ in *Mutual Shipping Corp v Bayshore Shipping Co*, The ‘Montan’ [1985] 1 LLR 189 (CA), said that of the term ‘accidental slip or omission’ as “an animal...usually recognisable when it appears on the scene. Note that words used in Article 33 are different.

⁷⁷ Order 20 Rule 11 of the Rules of Court

⁷⁸ Note that words now used are different. Although the word ‘omission’ is dropped, it is clear from the description of the class of mistakes covered that they cover both errors of omission and commission.

⁷⁸ Order 20 Rule 11 of the Rules of Court

of miscalculations, use of wrong data in calculations, omission of data in calculations, and clerical or typographical errors made in the course of typing or drafting the award. Such mistakes or omissions need not have been directly attributable to the tribunal⁷⁹. However mistakes or errors of judgment, whether of law or fact cannot be corrected by the invocation of this rule⁸⁰. Corrections may be made on the tribunal's own initiative or at the request made by any of the parties to the tribunal within 30 days of the date of the award.

2.32.2 Apart from the correction of errors, Clause 43 would also give to the tribunal the power on the application of a party to give an interpretation or clarification of the award or part of the award. The interpretation or clarification when made would form part of the original award. In relation to claims made but omitted from the decisions in the award the tribunal may also make an additional award on claims presented in the arbitral proceedings but omitted from the award. Again these powers are not intended to permit the tribunal to re-visit issues canvassed and decided or to re-consider any part of the decisions consciously made.

2.33 *Effect of the award (Clause 44)*

2.33.1 This provision restates the existing law. It confirms that the doctrine of *res judicata* which applies to proceedings in court applies similarly to matters referred to arbitration⁸¹. Similarly, any finding of fact or law in an earlier award relevant to matters in difference in those proceedings would, unless a third party is involved⁸², be conclusive as between them⁸³ viz. issue estoppel. An award may therefore be used as a defence to a claim, or to set-off dues made in any court proceedings in Singapore.

2.33.2 This clause is also intended to clarify the effect of the decision of the Singapore Court of Appeal in *Jeffrey Tang v Stanley Tan*⁸⁴. The Court of Appeal in *Jeffrey Tang* held that under the Model Law an arbitral tribunal may recall its award and amend or revoke it as long as it does so before the arbitration proceedings are terminated. This interpretation of the Model Law is inconsistent with international arbitration practice and English cases on the nature and effect of arbitral awards both in domestic and international arbitrations. Leading arbitration practitioners have made representations that this decision would cause uncertainty in the accepted principles of finality of arbitral awards and should be clarified by legislation. We believe that it is important to state clearly in the Bills the position is that an award made and delivered in the course of an arbitration is for the purposes of the issues decided therein, final and binding between the parties. We have thus provided that an award may not be amended in any manner or revisited except in accordance with the provision dealing with correction of clerical errors or interpretation of

⁷⁹ Some guidance may be sought on how the courts treated such mistakes under the 'slip rule'. See *Chessum & Sons v Gordon* [1901] 1 KB 644; *Re Inchcape* [1942] All ER 157 (CA). Both cases involved errors or omissions attributable to counsel who had failed to bring them to the court's attention. In *Mutual Shipping Corp v Bayshore Shipping Co, The 'Montan'* [1985] 1 LLR 189 (CA), the court took the view that the tribunal's power under section 17 of the English Arbitration Act 1950 (Section 13 AA) is similar to that of the court under the Rules of Court (Order 20 rule 11).

⁸⁰ *Pegang Prospecting Co Ltd v Chan Phooi Hoong & Another*, (1957) 23 MLJ 23 (CA. Mathew CJ, Murray-Aynley CJ and Prethoroe J) where the court held that the supplementary award (which the tribunal had no power to issue) could not rectify the fundamental wrongs in the original award.

⁸¹ *Siporex Trade SA v Comdel Commodities Ltd* [1986] 2 LLR 428; *Fidelitas Shipping Co. Ltd v V/O Exportchleb* [1965] 1 LLR 13

⁸² *Imperial Gas Light & Coke Co v Broadbent* (1859) 7 HL Cas 600

⁸³ *Sybray v White* (1836) 1 M & W 435; *Gueret v Audouy* (1893) 62 LJQB 633; *Aktiebolaget Legis v V Berg & Sons Ltd* [1964] 1 LLR 203

⁸⁴ [CA, 22.06.2001]

the award. A similar amendment is made in the International Arbitration (Amendment) Bill. We have also amended the Arbitration Bill in respect of the definition of ‘award’ in clause 2 in order to clarify that awards do not include interim or interlocutory orders not dealing with the substance of the matters in dispute in the arbitration.

2.34 *Determination of preliminary point of law (Clause 45)*

Clause 45 essentially preserves the existing consultative procedure under section 29 of the existing Arbitration Act with slight modifications. The wording is adapted from section 45 of the UK Arbitration Act 1996. The procedure allows questions of law to be dealt with by the courts if all the parties so agree or if a party applies with the consent of the tribunal. The modification made to the existing provision is the requirement that on such an application the court would have to be satisfied that the question of law must be such as to substantially affect the rights of one or more of the parties. An appeal to the Court of Appeal is permitted if the question is of general importance or if there is some special reason for it to be considered by the Court of Appeal. NUS suggested that such a process is not available in the International Arbitration Act and the same position should be preserved for domestic arbitration. We take the view however that as a policy there should be some residual supervisory function for the Court over domestic arbitration to assist in the development of legal principles arising out of domestic arbitration. This provision gives the Court that limited supervisory role and is consistent with this policy.

2.35 *Enforcement of the award (Clause 46)*

This provision re-enacts the existing section 20 of the Arbitration Act providing for the enforcement of arbitral awards made under this Act as judgments and orders of court. Before enforcement is granted leave needs to be obtained. Like the existing Arbitration Act provision, Clause 46 does not set out the grounds for refusal of leave. These would necessarily include those grounds which would entitle the court to remit or set-aside the award on appeal, or where the award is uncertain, ambiguous⁸⁵ or incomplete⁸⁶ or that the award exceeded the terms of reference⁸⁷.

2.36 *No judicial review of award (Clause 47)*

This Clause provides for the exclusion of judicial review by the Court of any award unless specifically provided for in the Bill.

2.37 *Setting aside of awards (Clause 48)*

2.37.1 The grounds for setting aside an award are set out comprehensively in Clause 48. These provisions are adopted from Article 34 of the ML and section 24 of the International Arbitration Act which mirror the grounds under the New York Convention 1958. However unlike the regime under the IAA or ML, these grounds are not specified as exhaustive as it is also possible to set aside an award made under the Bill on appeal on a question of law⁸⁸.

⁸⁵ *Tan Toi Lan v Lai Kee Ying* [1975] 1 MLJ 27; *Jeeram v National Union of Plantation Workers* [1993] 3 MLJ 104 where the Malaysian High Court said that awards were either incomplete, not answering the issues or made no determination of the facts.

⁸⁶ *Official Assignee v Chartered Industries of Singapore* [1978] 2 MLJ 99 where Chua J said that the failure to decide all the issues rendered the award void for ambiguity and unenforceable.

⁸⁷ *Goldenlotus Maritime Ltd v European Chartering and Shipping Inc* (No 2) [1994] 1 SLR 383

⁸⁸ See Clauses 49 - 50.

The power to set aside an award under Clause 48 is discretionary. The Court may consider the severity of the transgression and the prejudice it may have on the respective parties notwithstanding that one or more of the grounds are made out⁸⁹. The burden of showing and proving these grounds lies with the party applying to set aside the award.

2.37.2 NUS suggested that the inclusion of these grounds create more grounds than under the existing Arbitration Act for setting aside; that either the limited appeal or the setting aside provisions be retained but not both. We note that in section 68 of the UK Arbitration Act 1996, grounds for setting aside under a new category of ‘serious irregularity’ were included in place of the ML grounds. SIAC recommended that this be adopted. NUS’s observation is however not entirely correct as under the Bill, ‘Misconduct of the arbitrator or of the proceedings’ as a ground for setting aside under the existing Arbitration Act⁹⁰ has been removed. As for the adoption of the UK provisions, we prefer a more consistent approach so that instead of adopting a new category of grounds, the grounds as set out in ML and the New York Convention should be followed.

2.37.3 A time limit of 3 months for such applications to be made was added on the representation of the LRCC.

2.37.4 NUS suggested that in Clause 48(1)(b)(ii) the ground for setting aside should be described as ‘enforcement of the award’ instead of ‘the award’ to be consistent with the New York Convention. We note however that the New York Convention and ML use the term in different contexts. In the former, the relevant provision was for the purposes of resisting enforcement of the award hence the term ‘enforcement of the award’ was used. In the ML which is concerned with the setting aside of the award, these words were omitted. In terms of drafting accuracy, we take the view that Clause 48(1)(b)(ii) needs no mention of ‘the enforcement’.

2.37.5 *Incapacity of a party to the arbitration agreement*

The capacity of a party to enter into an arbitration agreement depends on the personal law of that party viz. the place of domicile (for individuals) or of incorporation (for bodies corporate).

2.37.6 *Invalidity of the arbitration agreement*

The basis of any arbitration and the consequent award is the arbitration agreement. In the absence of such an agreement, any award purportedly made thereunder must necessarily fail. The arbitration agreement must conform to the law the parties have subjected it, viz. the law that governs the arbitration agreement and not that which governs the underlying commercial contract⁹¹. The law of Singapore becomes relevant in determining the validity of the arbitration agreement only if there is no indication that the parties had subjected it to any other law.

2.37.7 *Not given proper notice of the appointment or of the arbitration proceedings*

This provision requires that the party against whom the award is sought to be enforced was properly notified of the appointment of the arbitrator and of the arbitration

⁸⁹ *China Nanhai Oil Joint Service Corp Shenzhen Branch v Gee Tai Holdings Co Ltd* [1995] ADRLJ 127

⁹⁰ s 17 AA

⁹¹ It could of course be that sometimes these two are the same.

proceedings so that the party may be given the opportunity to participate. The question of when notice is improper would depend on the facts of each case. As arbitration is a private process, no specific method of notice should be imposed so long as the party is made aware of the appointment or of the proceedings. Courts have generally rejected attempts to challenge the award on this ground where parties chose to ignore notices⁹². If steps were taken in the arbitration proceedings, absence of receipt of actual notice would be irrelevant⁹³. However the mere fact that no steps were taken is not sufficient proof that no notice was given⁹⁴.

2.37.8 *Otherwise unable to present his case*

The notice requirement in relation to the appointment of the arbitrator and of the arbitration are specific examples of the principle that the party against whom an award is made must be given the opportunity to defend the claims. The wider words here simply emphasize the general rule. The test is whether the party was in fact precluded. It obviously excludes those instances where such objections have been dealt with by the tribunal⁹⁵ such as refusal to grant time extension⁹⁶. So where the complaint was that an interpreter was not provided for at the hearing, the fact was that a party's lawyer acted as his interpreter and that he was not shown to be deficient in interpreting would not amount to disability to present his case⁹⁷. Inability to attend the hearing for fear of extradition to face criminal charges at the place of hearing would not constitute inability to present one's case⁹⁸. The mere fact that the award stated that the tribunal had 'through independent investigation' ascertained the quantum of damages would not satisfy this ground if the party had ample opportunity to make submissions on quantum in the course of the proceedings⁹⁹.

2.37.9 *Award deals with matters outside scope of reference*

This ground must be distinguished from that in which the jurisdiction of the tribunal to act in the arbitration is challenged. It assumes that there is arbitral jurisdiction, the issue being the extent and scope of the reference. The scope of a reference may be ascertained from the arbitration agreement, the 'pleadings' exchanged or the terms of reference or issues agreed to by the parties for determination by the tribunal.

⁹² Yearbook XVII, Korea 1 (sub 2-4), where the Seoul High Court found notice to be properly given when it was served on the local agents of the respondents and in Korea 2 (sub9-11), the court similarly held that the notice given to the London office of a Korean respondent was sufficient notice.

⁹³ Yearbook XVIII, Hongkong 3 (sub 8), where the respondent had in fact submitted a defence.

⁹⁴ Yearbook XVII, Italy No 114 (sub 8) where the Italian court found that the party had knowledge but showed no interest in the proceedings. In Yearbook XX-XXI, India 22 (sub 14-17), *Renusagar v GEC*, the Supreme Court of India considered the defence that the tribunal continued with the merits of GEC's claims without further notice to Renusagar. The court rejected Renusagar's objection because it found that Renusagar was aware of the proceedings and chose not to participate. They had written to the ICC saying "We have been repeatedly informing you that the Arbitrators have become *functus officio*. Therefore be so kind as not to communicate with us any further regarding the arbitration which had become *infructuous*".

⁹⁵ Yearbook XVII, FR Germany 36 (sub-15-17)

⁹⁶ Yearbook XVII-XIX, US 149 (sub 10)

⁹⁷ Yearbook XVIII, Hongkong 2 (sub 25)

⁹⁸ Yearbook XVIII, US 130 (sub 5) – Where the US District Court I New York rejected the respondent Mr Khashoggi's assertion that he was afraid to go to England for the arbitration as a ground for resisting the award, describing it as "diversionary and frivolous"

⁹⁹ Yearbook XXI, Hong Kong 9 (sub 2-9)

2.37.10 The Court should be cautious that in examining the application of this ground it does not go into the merits of the case raised before the arbitrators. Where the arbitration agreement specifies the nature and scope of the matters referable thereunder, the court cannot ignore the words or rewrite the Clause¹⁰⁰.

2.37.11 Where a part of the award is found to be made in excess of arbitral authority, the court may sever the award and set aside such part of the award as may be found excessive. In this way decisions made which fall within the scope of the reference remain enforceable.

2.37.12 *Irregularity in the composition of the tribunal or procedure*

This provision contains 2 parts. The first deals with the composition of the tribunal. It enforces a party's right to insist on the adherence to the agreed composition of the tribunal with regard to the number, qualification and/or disqualification and the appointing procedure.

2.37.13 The second limb of this provision is worded generally to cover irregularities in the arbitral procedure. This is however not intended to permit a review of every procedural ruling made by the tribunal. Errors or mistakes in procedure should be such as to have caused substantial injustice before an otherwise valid award should be set aside on this ground.

2.37.14 Where the agreed procedure is contrary to the mandatory provisions of the Bill, the agreed procedure would in any event not apply.

2.37.15 *Award induced or affected by fraud or corruption*

This is adopted from section 24 of the International Arbitration Act. Where fraud or corruption is involved in the making of the award, the award must be set aside. Clear instances contemplated by the provision would be where an arbitrator or arbitrator(s) have been bribed, coerced or blackmailed to take a particular position. The invocation of this ground involves a very serious allegation of impropriety on the part of the tribunal or a party. It would necessarily entail an examination by the Court of the circumstances surrounding the making of the award, the conduct of the tribunal and the parties. Such an allegation must not be allowed to be made except with very strong and cogent evidence.

2.37.16 *Breach of rules of natural justice*

This provision is also adopted from section 24 of the International Arbitration Act. It is intended to cover situations where the arbitral proceedings (whether in breach of or in accordance with the agreed procedure) were conducted such as to deprive a party from being fully heard which results in an adverse finding against that party. To some extent the coverage here overlaps the ground where a party is '*otherwise unable to present his case*'. The term "rules of natural justice" is not defined. With time, jurisprudence in this area should serve as the eventual guide.

¹⁰⁰ Yearbook XVII, Hongkong 5 (sub 13-20) –The clause referred to 'Disputes as to quality or condition of rubber or other disputes arising from these contract regulations...' to arbitration in Malaysia. The Hong Kong Court of Appeal refused enforcement of an award based on a claim for non-payment

2.37.17 *Subject matter is not capable of settlement by arbitration*

Clause 48(1)(b) gives to the Court on its own motion the power to refuse enforcement of the award if the subject matter in dispute is not arbitrable. Subject matter arbitrability has a direct impact on the jurisdiction of the tribunal and is also arguably a matter of public policy as to which subject matters are incapable of arbitral resolution. It is generally accepted that issues, which may have public interest elements, may not be arbitrable, e.g., citizenship or legitimacy of marriage, grants of statutory licenses, validity of registration of trade marks or patents, copyrights, winding-up of companies, bankruptcies of debtors, administration of estates.

2.37.18 *Award is contrary to public policy*

A violation of the rules of public policy of Singapore is a ground for the setting aside of awards under Clause 48(1)(b)(ii). The scope of what lies within the domain of public policy as it applies to arbitration in the domestic regime is deliberately not defined. While a strict and narrow construction is applied in international cases such that enforcement would be refused only if the award violates the ‘most basic notions of morality and justice’¹⁰¹ or that there is a ‘serious shortcoming touching upon the fundamental principles of economic and constitutional life’¹⁰², a wider and less stringent application could well be justified in relation to an award under the domestic regime. On the other hand, public policy as a ground to set aside the award should not be treated as a catch-all provision to be used whenever convenient¹⁰³.

2.37.19 *Suspension of setting aside proceedings*

Clause 48(2) is adopted from Article 34(5) of the ML. It allows the Court hearing an application to set aside the award, to postpone making a decision on the application until

¹⁰¹ *Parsons & Whittemore v RAKTA*, US Court of Appeals 2nd Circuit, Yearbook I, US 7 p 205; *Fotochrome*, Yearbook I, US 103, p 202-203. In *Transport de cargaison v Industrial Bulk Carriers* [1990] *Revue de droit judiciaire* (Court of Appeal, Quebec), the court distinguished a bribe from a ransom as a bribe is intrinsically immoral for both offeror and receiver whereas a ransom involved immorality only on the part of the blackmailer. The court held that the arbitral award which imposed a reimbursement of a sum paid as ransom would not violate public policy of Canada and was enforced. In *Arcata Graphics Buffalo Ltd v Movie (Magazine) Corp* CLOUT Case 37 A./CN.9/SER.C/ABSTRACTS/2, the Ontario Court upheld an award which gave interest beyond that allowed under the Canada’s Interest Act on the basis that Canada should refuse enforcement only if the award is contrary to the essential morality of the state.

¹⁰² Yearbook XVII, FR Germany 38 (sub 3-7). The Federal Supreme Court opined that what is required is an infringement of ‘international public policy’ (ordre public)...The recognition of foreign arbitral awards thus is governed by a less stringent regime than domestic awards.” In another case, Yearbook XVII, FR Germany 40 (sub-2-3), the court considered that a violation of German Exchange Law would lead to a refusal of enforcement of a domestic award but not with a foreign award under the Convention.

¹⁰³ *China Nanhai Oil Joint Service Corp Shenzhen Branch v Gee Tai Holdings Co Ltd* [1995] ADRLJ 127(Hong Kong). In *Re Hainan Machinery Import & Export Corp v Donald & Pte Ltd* [1996] 1 SLR 34 (Judith Prakash J) the defendants has also argued that it would be contrary to public policy as there were facts which would give rise to the possibility that the award did not decide on the real matter in dispute between the parties (which the defendants claimed concerned the existence of a ‘force majeure certificate’) and that injustice would be done to the defendants if the award were to be enforced. The court held that public policy did not require it to refuse enforcement as “There was no allegation of illegality or fraud and enforcement would therefore not be injurious to the public good. ...the principle of comity of nations requires that the awards of foreign arbitration tribunals be given due deference and be enforced unless exceptional circumstances exist.” See also *Harris Adacom Corp v Perkom Sdn Bhd* [1991] 3 MLJ 504 where an attempt was made to resist the award on the ground that the claimants was in fact an Israeli interest with whom trade was prohibited by Malaysia. For a case on alleged collection of taxes for foreign state: *Zhejiang Province Garment Import and Export Co v Siemssen & Co (HK) Trading Ltd* [1992] ADRLJ 183

the tribunal has the opportunity to take steps to remedy any defect which is remediable. This procedure has sometimes been described by some as ‘remission’ but it should be borne in mind that in exercising this power the Court could only suspend its own proceedings and could not specifically direct the tribunal to hear witnesses or make further awards or corrections.

2.37.20 The scope of this power is necessarily limited to such of those matters that could be remedied by some act on the part of the tribunal.

2.38 *Appeal against awards (Clause 49)*

2.38.1 We considered the desirability of abolishing the right of appeal to the Court on substantial issues in the arbitration. The argument in favour of abolishing the right of appeal is that the parties having chosen to arbitrate should be bound by the finding of the tribunal and not that of the Court. So whether the Court would reach a similar conclusion would not be relevant and if the court were to come to a different view, the substitution of the Court’s view to that of the tribunal would inevitably subvert the agreement of the parties. This proposition was accepted by the Law Reform Sub-Committee on Review of Arbitration Law when they recommended the adoption of Model Law and the enactment of the International Arbitration Act. In relation to domestic arbitration, the Sub-Committee suggested that *‘the courts should be more closely involved...(both in order to protect weaker parties and for the purpose of being involved in the evolution of decisions that concern domestic law and practice)’*¹⁰⁴. We find much wisdom in this view and accept that an absolute abolition of the right of appeal may not be desirable in arbitrations under the domestic regime. Retaining a limited degree of review by the court is consistent with the parties’ desire to have the matter decided in accordance with the law as properly understood and as applied in Singapore. The right of appeal against awards on questions of law is thus retained in this Bill.

2.38.2 The principles that had consistently been applied by the courts in granting or refusing leave as enunciated in the leading case of “The Nema”¹⁰⁵ are now spelt out in this clause. In addition, the right to appeal is limited by :

- (a) The requirement that the law in question must substantially affect the rights of the parties.
- (b) The issue of law must have been raised before the tribunal. This is intended to prevent situations where parties raise issues not canvassed before the tribunal and for which the tribunal appears to have made some error on the face of the award. Errors on the face of the award as a common law rule justifying review of the award was removed in 1980 by section 28(1) of the existing Arbitration Act and will be re-enacted under Clause 49.

¹⁰⁴ Para 16, Sub-Committee Report, 31 August 1993

¹⁰⁵ *B.T.P. Tioxide Ltd v Pioneer Shipping Ltd and Armada Marine SA* (“The Nema”) [1981] 2 Lloyd’s L Rep 239 (HL). Followed in *Antaios Compania Naviera SA v Salken Rederierna AB* [1985] AC 191 (HL). These cases have been consistently followed in Singapore in *Invar Realty Pte Ltd v JDC Corporation* [1989] 3 MLJ 13; *Goldenlotus Maritime Ltd v European Chartering & Shipping Inc* (No 1) [1993] 2 SLR 278; *Ahong Construction (S) Pte Ltd v United Boulevard Pte Ltd* (No 1) [1994] 2 SLR 735; *Jaya Offshore Pte Ltd v World Marine Co Ltd* [1997] 2 SLR 109

- (c) The issue of law must have as its basis the findings of fact by the tribunal. This is to prevent attempts by parties trying to review a tribunal's finding of facts by expressing it in the form of an issue of law. It also operates to ensure that the question of law has relevance to the facts as found.

2.38.3 The power of the Court under Clause 49 to grant leave to appeal is discretionary and the Court may refuse leave unless it is just and proper in all the circumstances.

2.38.4 Clause 49(5) read with Clause 52 allows the court in considering an application for leave to do so without hearing unless it appears to the court that hearing is required. This is consistent with the tests for granting leave under *The Nema* principles as summarised in Clause 49(5)(c)(i) viz. whether the tribunal's decision was '*obviously wrong*' or '*open to serious doubt*'. The rationale is that if the question of law is '*obviously wrong*' or '*open to serious doubt*', it should in most instances be apparent from the award and requires no hearing¹⁰⁶.

2.39 *Supplementary provisions on appeal (Clause 50)*

2.39.1 Clause 50 is adapted from section 69 of the UK Arbitration Act 1996 with slight modifications. Some arbitrations conducted under rules of trade bodies¹⁰⁷ or arbitral institutions, provide for an appeal process within the arbitral system. Clause 50(1) recognises the role of such arbitral processes of appeal. Appeal to the Court cannot be brought until the available appeal processes have first been exhausted.

2.39.2 It is not unusual that an award made by the tribunal is collected by the parties later for various reasons, the most common of which is that parties are waiting for funds to pay for the tribunal's fees. The present procedure as set out in the Rules of Court sets the time limit for appeal as 21 days to run from the date the '*award has been made and published to the parties*' implying that the award must be brought to the attention of both the parties¹⁰⁸. This could arguably mean that for so long that a party has not received the award, time might not run for the purposes of an appeal. There could also be the difficult question of when is an award said to have been delivered or released or otherwise published to the parties.

2.39.3 Clause 50(3) removes this uncertainty by adopting the use of 'date of the award' as opposed to '*made and published to the parties*'. This provides a certain and incontrovertible date for reckoning of time set for appeal. To compensate for any time loss in the making and collection of the award, the time limit for appealing against an award is increased from the present 21 days to 28 days after the date of the award.

2.40 *Effect of order of Court on appeal (Clause 51)*

2.40.1 The text of Clause 51 is adopted from section 71 of the UK Arbitration Act 1996. A variation order made by the court has the effect as part of the award and thus

¹⁰⁶ This appears to be the view of the Court of Appeal in *Hong Lam Marine Pte Ltd v American Home Assurance Co Ltd* [[1999] 3 SLR 682] where Yong CJ said " In the final analysis, the important question is whether an error can be demonstrated quickly and easily; if hours of legal argument are required, the applicant will not have succeeded in satisfying the court that the award is '*obviously wrong*'.

¹⁰⁷ Most of these trade bodies are foreign to Singapore e.g. GAFTA (Grain and Feed trade Association); Federation of Oils Seeds and fats Association).

¹⁰⁸ Order 69 r 4(2) ROC

enforceable as such. Where the court remits the award to the tribunal, the tribunal's jurisdiction is revived for the purposes of reconsidering the matters remitted¹⁰⁹ and to make a revised award within 3 months.

2.40.2 Where an award has been set aside or declared to be of no effect, the difficult question parties have often to face is whether to re-commence arbitration proceedings or proceed to have the matter litigated in court. Quite often, the parties would by then be weary and could well settle the matter or proceed in Court. Unless the arbitration agreement itself is set aside, the matter would have to proceed by a fresh arbitration if no agreed method of resolution is reached.

2.40.3 In many old contracts and in particular insurance policies, arbitration clauses require a party to first obtain an arbitral award as a condition precedent to commencement of Court proceedings. Such clauses are known as *Scott v Avery*¹¹⁰ clauses. Where an award is set aside, a party would have no recourse but to recommence arbitration to get another award again. Clause 51(4) however gives the Court the discretionary power to override the effect of such a clause over the subject matter covered in the award which has been set aside.

2.40.4 It should be noted that the arbitration agreement is not automatically displaced merely because an award made thereunder has been set aside. The Court's power is limited to allowing the matters covered under the award which had been set aside to proceed in the Court.

2.41 *Procedural matters relating to applications for leave to appeal (Clause 52)*

To ensure a consistent procedure and practice in relation to applications for leave to appeal, a new Clause 52 is added. Such applications shall be determined without a hearing unless the Court so requires.

2.42 *Miscellaneous matters (Clauses 53 to 67)*

2.42.1 This Part provides for matters such as service of notices (Clause 53), repeal of the Arbitration Act (Cap. 10), transitional provisions and consequential amendments to other laws. Some of the provisions are highlighted below:

2.42.2 *Immunity of arbitrators (Clause 59)*

This clause introduces limited immunity for arbitral institutions. Immunity is extended to the function of the appointment or nomination of arbitrators unless it can be shown that bad faith was involved. Arbitral institutions are also not liable for the actions of the arbitrators they appoint. This Clause is adopted from section 74 of the UK Arbitration Act 1996.

2.42.3 *Appointment of mediator (Clauses 62 & 63)*

These clauses are taken from sections 16 and 17 of the International Arbitration Act. It is intended to give recognition to the role of mediation in dispute resolution. It will also bring the regime applicable to domestic arbitration as close as possible to the regime

¹⁰⁹ *Goldenlotus Maritime Ltd v European Chartering and Shipping Inc* (No 2) [1994] 1 SLR 383

¹¹⁰ (1856) 5 HL Cas 811

applicable to international arbitration where mediation is also contemplated as part of the dispute resolution process. Clause 62 also provides that the Chairman of the Singapore Mediation Centre may appoint a mediator if a party refuses to appoint or does not appoint a mediator within the time specified in the agreement. Clause 63 provides that an arbitrator may act as a mediator if the parties to the arbitration so consent in writing. The term “conciliator” as used in the International Arbitration Act has been changed to “mediator” for reasons of the latter’s more common usage. A corresponding amendment has been made in the International Arbitration (Amendment) Bill 2001.

2.42.4 The Singapore Mediation Centre being the leading institution in this area has been given the statutory function of appointing the mediator in the event parties are unable to so agree. The issue of express legislative provisions to facilitate mediation was discussed but it was concluded that this would go beyond the boundaries of an Arbitration Act. Legislation to facilitate mediation should be the subject of a separate study by LRRD.

2.42.5 Transitional provisions (Clause 65)

The transitional provisions provide that the Bill shall not apply to an arbitration that has commenced before the date of commencement of the Arbitration Act 2001, unless the parties otherwise agree. The law applicable to an arbitration commenced before the date of commencement of the Arbitration Act 2001 is the law applicable to such arbitration as if the Arbitration Act 2001 has not been enacted. This is the same position adopted when the International Arbitration Act was first enacted in 1994. At the request of the Ministry of Law, we provided for a special transitional provision for arbitration agreements that provide for an umpire or 2-man tribunals. This transitional provision will apply to arbitration agreements made before the commencement date of the Arbitration Act 2001 but where the arbitration commences after the abovementioned commencement date. The Ministry was concerned that arbitration agreements with references to umpires would no longer be able to invoke the statutory provisions in the existing Arbitration Act.

2.42.6 Consequential amendments (Clauses 66 & 67)

The consequential amendments to the Bankruptcy Act and the Limitation Act are provided for in Clauses 66 and 67. Clause 66 which relates to the consequential amendment to the Bankruptcy Act is modeled after section 349 of the UK Insolvency Act, with a slight modification. As proposed by the Official Assignee in his representation to us, we have provided that the Official Assignee need not obtain the consent of the creditor’s committee before applying to the court for an order that the matter concerned be referred to arbitration if the Official Assignee does not adopt the arbitration agreement.

Order 21 (withdrawal and discontinuance of actions) of the Rules of Court will also have to be amended as a consequence of this Bill but this is beyond the scope of this report.

PART II –A BRIEF COMMENTARY ON THE INTERNATIONAL ARBITRATION (AMENDMENT) BILL 2001

3. Draft International Arbitration (Amendment) Bill

3.1 Matters consistent with the new Arbitration Bill 2001

Amendments are proposed to the IAA in the International Arbitration (Amendment) Bill 2001 so as to achieve a certain extent of consistency between the 2 regimes. The definition of “arbitration agreement” was amended so as to achieve consistency with the definition under the new Arbitration Bill. Section 6 of the IAA on stay of proceedings was also streamlined to be consistent with clause 6 of the Arbitration Bill. New sections 8A dealing with application of the Limitation Act and reference of interpleader issues to arbitration were also introduced, as consistent with the new Arbitration Bill. Section 13 of the International Arbitration Act dealing with summoning of witnesses was also redrafted to bring it in line with the corresponding provision in the Arbitration Bill. A new section 25A dealing with immunity of arbitral institutions in the appointment of arbitrators was also introduced.

3.2 Stay of proceedings to preclude operation of Article 8 Model Law

The existing section 6(1) of the IAA is worded as ‘without prejudice’ to Article 8 of the Model Law, allowing the possibility that Article 8 may prevail over section 6. We believe that the original intention was to grant to the Court a positive power to ‘refer the parties’ to arbitration as opposed to only staying the court proceedings. It appears that such a power is probably more appropriate for jurisdictions where the concept of ‘stay of court proceedings’ is not fully endorsed. There appears to be a possible conflict in application, e.g., where section 6 requires that stay be made before filing of pleadings or taking step in the proceedings, Article 8 allows an application to be made “not later than when submitting his first statement on the substance of the dispute”. This may give rise to argument that a party may still be able to file an application under Article 8 even if he has failed to satisfy the conditions under s 6 for a stay. To avoid this complication we agree with SIAC’s representation on this issue and have provided in section 6 that the section operates “notwithstanding Article 8 of the Model Law”.

3.3 Law of arbitration other than Model Law (Clause 11)

Section 15 of the existing International Arbitration Act was intended to allow parties who desire a greater degree of judicial intervention to opt out of the ML regime into the Arbitration Act as the applicable law of arbitration. It was never intended that the mere adoption of institutional rules by parties would oust the application of ML.¹¹¹ For the avoidance of doubt, section 15 is amended by making specific reference to the law of

¹¹¹ *In Coop International Pte Ltd v Ebel S.A.* [1998]3 SLR 670, Chan Seng Onn JC (as he then was), said at para 142 to 146, in relation to a hypothetical situation where if the parties had chosen Singapore as the place of arbitration and adopted the Rules of the Chamber of Commerce and Industry of Geneva, then the parties would have successfully opted out of the IAA by implication. He illustrated his view with the example that under the Geneva Rules, the arbitrators are to be appointed by the Chamber of Commerce and Industry of Geneva, whereas under the IAA, the Chairman SIAC is the appointing authority. With respect, the court’s view on this point is erroneous. Choice of institutional rules of arbitration have been confused with the application of *lex arbitri*. The role of Chairman SIAC as appointing authority under IAA, is restricted in such situations where the agreed appointing authority fails to take steps to make the appointment. See Article 11(4)(c) Model Law.

arbitration and that the Arbitration Act 2001 would apply to the arbitration if parties choose to opt out of the IAA or ML. A new section 15(2) is added to ensure that a mere reference in an arbitration agreement to any institutional rules shall not be sufficient to exclude the application of the Model Law or the International Arbitration Act to the arbitration concerned¹¹².

PART III – CONCLUSION

4.1 We have provided in the overhaul of the domestic arbitration laws, a new Arbitration Bill that is more consistent with the UNCITRAL Model Law but retains curial intervention to a larger extent than for international arbitrations as domestic courts have an interest in the development of arbitration laws that are going to be used largely by local parties. As international arbitrations involve sophisticated and mobile parties and arbitrators, the IAA should retain its international flavour in its current Uncitral Model Law form.

4.2 We have maintained separate regimes for domestic and international arbitration as we are of the view that it is more user-friendly for parties and arbitrators. There is however a high degree of harmonisation between the two regimes proposed in the Bill than that between the existing AA and the IAA¹¹³.

4.3 We have also imported useful features found in the UK Arbitration Act 1996 for example, the provisions on appeals, notices, immunity of arbitral institutions and so forth.

4.4 A comparative table on the source of each provision in the Arbitration Bill is annexed to the end of the draft Bill.

Related laws

4.5. Clause 9 of the Contracts (Rights of Third Parties) Bill 2001 ensures that, where appropriate, the provisions of the Arbitration Bill 2001¹¹⁴ or the International Arbitration Act (Cap.143A) apply in relation to third party rights under the Act. Without this section, the main provisions of the Arbitration Act 2001 or the International Arbitration Act (Cap.143A) would not apply because a third party is not a party to the arbitration agreement between the promisor and the promisee.¹¹⁵

4.5.1 Sub-clause (1) of clause 9 deals with what is likely to be the most common situation. The third party's substantive right (for example, to payment by the promisor) is conferred subject to disputes being referred to arbitration. This sub-clause is based on a

¹¹² The confusion between contractual rules and applicable law of the arbitration is even more evident in the decision of *John Holland Pty Ltd v Toyo Engineering Corp* [OM 30 of 2000; Unreported 15 March 2001, Choo Han Teck JC] where the Court said that “*Model Law was created as an optional set of rules to be utilized like any other set of contractual rules such as the ICC Rules*” ignoring the clear words of s 3 IAA which states that “*Model Law shall have the force of law in Singapore*”.

¹¹³ Users should always be conscious of the scope of application and the differences in the 2 regimes or face the consequences illustrated by the decisions in *Ocean Marine Mutual Insurance Association Ltd v Joo Tat Shipping Pte Ltd* [Unreported Suit 378/1998; Khoo J - 21 Nov 1998] and *Fasi v Specialty Laboratories Asia Pte Ltd (No 1)* [1999] 4 SLR 488 where applications were made under the wrong arbitration Act.

¹¹⁴ A new Arbitration Act 2001 is read and passed in Parliament on 5 Oct 2001.

¹¹⁵ This clause is based on section 8 of the UK Act, the result of a Commons Amendment, agreed to by the House of Lords on 10 Nov 1999. Available at <<[<http://www.parliament.the-stationery-office.co.uk/>>](http://www.parliament.the-stationery-office.co.uk/)

“conditional benefit” approach. It ensures that a third party who wishes to take action to enforce his substantive right is not only able to enforce effectively his right to arbitrate, but is also “bound” to enforce his right by arbitration (so that, for example, a stay of proceedings can be ordered against him under the Arbitration Act 2001 or the International Arbitration Act (Cap.143A)).¹¹⁶

4.5.2 Sub-clause (2) of clause 9 is likely to be of rarer application. It deals with situations where the third party is given a right to arbitrate, but the “conditional benefit” approach underpinning sub-clause (1) is inapplicable. For example, where the contracting parties give the third party a unilateral right to arbitrate or a right to arbitrate a dispute other than one concerning a right conferred on the third party under sub-clause (1). To avoid imposing a pure burden on the third party (in a situation where, for example, the contracting parties give the third party a right to arbitrate a tort claim made by the promisor against the third party) the sub-clause requires the third party to have chosen to exercise the right. The timing point at the end of the sub-clause is designed to ensure that a third party who chooses to exercise his right to go to arbitration by, for example, applying for a stay of proceedings under the Arbitration Act 2001 or the International Arbitration Act (Cap.143A), can do so. Under the Arbitration Act 2001 or the International Arbitration Act (Cap.143A), the right to apply for a stay of proceedings can only be exercised by someone who is already a party to the arbitration agreement.

4.6 We wish to take this opportunity to express our gratitude to the parties who have made the effort to submit substantial representations and comments on the original draft Bill. Many of the valuable suggestions have been incorporated in the final draft Bill.

¹¹⁶ This approach is analogous to that applied to assignees who may be prevented from unconscionably taking a substantive benefit free of its procedural burden (see, for example, *DVA v Voest Alpine, The Jaybola* [1997] 2 Lloyd’s Rep 279). “Disputes ... relating to the enforcement of the substantive term by the third party” is intended to have a wide ambit and to include disputes between the third party (who wishes to enforce the term) and the promisor as to the validity, interpretation, existence or performance of the term; the third party’s entitlement to enforce the term; the jurisdiction of the arbitral tribunal; or the recognition and enforcement of an arbitration award. But to avoid imposing a “pure” burden on the third party, it does not cover, for example, a separate dispute in relation to a tort claim by the promisor against the third party for damages.

Arbitration Bill

Bill No. 37/2001

Read the first time on 25th September 2001.

THE ARBITRATION BILL 2001

(No. 37 of 2001)

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title and commencement
2. Interpretation
3. Application of this Act

PART II

ARBITRATION AGREEMENT

4. Arbitration agreement
5. Arbitration agreement not to be discharged by death of party

PART III

STAY OF LEGAL PROCEEDINGS

6. Stay of legal proceedings
7. Court's powers on stay of proceedings
8. Reference of interpleader issue to arbitration

PART IV

COMMENCEMENT OF ARBITRATION PROCEEDINGS

9. Commencement of arbitration proceedings
10. Powers of Court to extend time for beginning of arbitration proceedings
11. Application of Limitation Act

PART V

ARBITRAL TRIBUNAL

12. Number of arbitrators
13. Appointment of arbitrators
14. Grounds for challenge
15. Challenge procedure
16. Failure or impossibility to act
17. Arbitrator ceasing to hold office
18. Appointment of substitute arbitrator
19. Decision by panel of arbitrators
20. Liability of arbitrator

PART VI

JURISDICTION OF ARBITRAL TRIBUNAL

21. Separability of arbitration clause and competence of arbitral tribunal to rule on its own jurisdiction

PART VII

ARBITRAL PROCEEDINGS

22. General duties of arbitral tribunal
23. Determination of rules of procedure
24. Statements of claim and defence
25. Hearings and written proceedings
26. Consolidation of proceedings and concurrent hearings
27. Power to appoint experts
28. General powers exercisable by arbitral tribunal
29. Powers of arbitral tribunal in case of party's default
30. Witnesses may be summoned by subpoena
31. Court's powers exercisable in support of arbitration proceedings

PART VIII

AWARD

32. Law applicable to substance of dispute
33. Awards made on different issues
34. Remedies
35. Interest
36. Extension of time for making award

37. Award by consent
38. Form and contents of award
39. Costs of arbitration
40. Fees of arbitrator
41. Power to withhold award in case of non-payment
42. Court may charge property with payment of solicitor's costs in arbitration
43. Correction or interpretation of award and additional award
44. Effect of award

PART IX

POWERS OF COURT IN RELATION TO AWARD

45. Determination of preliminary point of law
46. Enforcement of award
47. No judicial review of award
48. Court may set aside award
49. Appeal against award
50. Supplementary provisions to challenge appeal
51. Effect of order of Court upon appeal or challenge against award
52. Application for leave of Court, etc.

PART X

MISCELLANEOUS

53. Notice and other requirements in connection with legal proceedings
54. Powers of Court and Registrar
55. Rules of Court
56. Proceedings to be heard otherwise than in open court
57. Restrictions on reporting of proceedings heard otherwise than in open court
58. Application to references under statutory powers
59. Immunity of arbitral institutions
60. Service of notices
61. Reckoning periods of time
62. Appointment of mediator
63. Power of arbitrator to act as mediator
64. Act to bind Government
65. Repeal and transitional provisions
66. Consequential amendments to Bankruptcy Act
67. Consequential amendments to Limitation Act

A BILL

i n t i t u l e d

An Act to provide for the conduct of arbitration and to repeal the Arbitration Act (Chapter 10 of the 1985 Revised Edition) and also to make consequential amendments to the Bankruptcy Act (Chapter 20 of the 2000 Revised Edition) and the Limitation Act (Chapter 163 of the 1996 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

PART I

PRELIMINARY

Short title and commencement

5 1. This Act may be cited as the Arbitration Act 2001 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Interpretation

2.—(1) In this Act, unless the context otherwise requires —

10 "appointing authority" means the appointing authority designated under section 13 (8) or (9);

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

 "arbitration agreement" has the meaning given to it in section 4;

15 "award" means a decision of the arbitral tribunal on the substance of the dispute and includes any interim, interlocutory or partial award but excludes any orders or directions made under section 28;

 "Court" means the High Court in Singapore;

20 "court" , for the purposes of sections 6, 7, 8, 11(1), 55, 56 and 57, means the High Court, District Court, Magistrate's Court or any other court in which the proceedings referred to in those sections are instituted or heard;

 "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;

25 "the place of the arbitration" means the juridical seat of the arbitration designated by —

 (a) the parties to the arbitration agreement;

 (b) any arbitral or other institution or person authorised by the parties for that purpose; or

30 (c) the arbitral tribunal as authorised by the parties,

or determined, in the absence of such designation, having regard to the arbitration agreement and all the relevant circumstances.

5 (2) Where any provision in this Act allows the parties to determine any issue, the parties may authorise a third party, including an arbitral institution, to make that determination.

(3) Where any provision in this Act refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules incorporated in that agreement.

10 (4) Where any provision in this Act refers to a claim, it shall also apply to a cross-claim or counter-claim, and where such provision refers to a defence, it shall also apply to a defence to such cross-claim or counter-claim.

Application of this Act

15 **3.** This Act shall apply to any arbitration where the place of arbitration is Singapore and where Part II of the International Arbitration Act (Cap.143A) does not apply to that arbitration.

PART II

ARBITRATION AGREEMENT

20 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 whether contractual or not.

25 (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, except as provided for in subsection (4), be in writing, being contained in —

(a) a document signed by the parties; or

30 (b) an exchange of letters, telex, telefacsimile or other means of communication which provide a record of the agreement.

(4) 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.

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

Arbitration agreement not to be discharged by death of party

5.—(1) An arbitration agreement shall not be discharged by the death of any party to the agreement but shall continue to be enforceable by or against the personal representative of the deceased party.

(2) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.

(3) Nothing in this section shall be taken to affect the operation of any written law or rule of law by virtue of which any right of action is extinguished by the death of a person.

PART III

STAY OF LEGAL PROCEEDINGS

Stay of legal proceedings

6.—(1) Where any party to an arbitration agreement institutes any proceedings in any court 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 pleading or taking any other step in the proceedings, apply to that court to stay the proceedings so far as the proceedings relate to that matter.

(2) The court to which an application has been made in accordance with subsection (1) may, if it is satisfied that —

(a) there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement; and

(b) the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration,

5 make an order, upon such terms as the court thinks fit, staying the proceedings so far as the proceedings relate to that matter.

(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 the court thinks fit in relation to any property which is or forms part of the subject of the dispute to which the order
10 under that subsection relates.

(4) Where no party to the proceedings has taken any further step in the proceedings for a period of not less than 2 years after an order staying the proceedings has been made, the court may, on its own motion, make an order discontinuing the proceedings without prejudice to the right of any
15 of the parties to apply for the discontinued proceedings to be reinstated.

(5) For the purposes of this section and section 8, a reference to a party includes a reference to any person claiming through or under such party.

Court's powers on stay of proceedings

7.—(1) Where a court stays proceedings under section 6, the court may,
20 if in those proceedings property has been arrested or bail or other security has been given to prevent or obtain release from arrest, order that —

(a) the property arrested be retained as security for the satisfaction of any award made on the arbitration; or

(b) the stay be conditional on the provision of equivalent security for
25 the satisfaction of any such award.

(2) Subject to the 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.

30 Reference of interpleader issue to arbitration

8. Where in proceedings before any court relief by way of interpleader is granted and any issue between the claimants is one in respect of which there is an arbitration agreement between them, the court granting the

relief may direct the issue between the claimants to be determined in accordance with the agreement.

PART IV

COMMENCEMENT OF ARBITRATION PROCEEDINGS

5 **Commencement of arbitration proceedings**

9. Unless otherwise agreed by the parties, the arbitration proceedings in respect of a particular dispute shall commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

10 **Powers of Court to extend time for beginning of arbitration proceedings**

10.—(1) Where the terms of an arbitration agreement to refer future disputes to arbitration provide that a claim to which the arbitration agreement applies shall be barred unless —

- 15 (a) some step has been taken to begin other dispute resolution procedures which must be exhausted before arbitration proceedings can be begun;
- (b) notice to appoint an arbitrator is given;
- (c) an arbitrator is appointed; or
- 20 (d) some other step is taken to commence arbitration proceedings,

within a time fixed by the agreement and a dispute to which the agreement applies has arisen, the Court may, if it is of the opinion that in the circumstances of the case undue hardship would otherwise be caused, extend the time for such period and on such terms as the Court thinks fit.

- 25 (2) An order of extension of time made by the Court under subsection (1) —

- (a) may be made only after any available arbitral process for obtaining an extension of time has been exhausted;
- (b) may be made notwithstanding that the time so fixed has expired;
- 30 and

(c) shall not affect the operation of section 9 or 11 or any other written law relating to the limitation of actions.

Application of Limitation Act

5 **11.—**(1) The Limitation Act (Cap.163) shall apply to arbitration proceedings as it applies to proceedings before any court and a reference in that Act to the commencement of any action shall be construed as a reference to the commencement of arbitration proceedings.

(2) The Court may order that in computing the time prescribed by the Limitation Act for the commencement of proceedings (including arbitration proceedings) in respect of a dispute which was the subject-matter of —

(a) an award which the Court orders to be set aside or declares to be of no effect; or

15 (b) the affected part of an award which the Court orders to be set aside in part or declares to be in part of no effect,

the period between the commencement of the arbitration and the date of the order referred to in paragraph (a) or (b) shall be excluded.

20 (3) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, the cause of action shall, for the purpose of the Limitation Act, be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

PART V

25 **ARBITRAL TRIBUNAL**

Number of arbitrators

12.—(1) The parties are free to determine the number of arbitrators.

(2) Failing such determination, there shall be a single arbitrator.

Appointment of arbitrators

13.—(1) Unless otherwise agreed by the parties, no person shall be precluded by reason of his nationality from acting as an arbitrator.

5 (2) The parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

(3) Where the parties fail to agree on a procedure for appointing the arbitrator or arbitrators —

10 (a) in an arbitration with 3 arbitrators, each party shall appoint one arbitrator, and the parties shall by agreement appoint the third arbitrator; or

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, the arbitrator shall be appointed, upon the request of a party, by the appointing authority.

(4) Where subsection (3)(a) applies —

15 (a) if a party fails to appoint an arbitrator within 30 days of receipt of a first request to do so from the other party; or

(b) if the 2 parties fail to agree on the appointment of the third arbitrator within 30 days of the receipt of the first request by either party to do so,

20 the appointment shall be made, upon the request of a party, by the appointing authority.

(5) If, under an appointment procedure agreed upon by the parties —

(a) a party fails to act as required under such procedure;

25 (b) the parties are unable to reach an agreement expected of them under such procedure; or

(c) a third party, including an arbitral institution, fails to perform any function entrusted to it under such procedure,

30 any party may apply to the appointing authority to take the necessary measure unless the agreement on the appointment procedure provides other means for securing the appointment.

(6) Where a party makes a request or makes an application to the appointing authority under subsection (3), (4) or (5), the appointing authority shall, in appointing an arbitrator, have regard to the following:

- (a) the nature of the subject-matter of the arbitration;
- 5 (b) the availability of any arbitrator;
- (c) the identities of the parties to the arbitration;
- (d) any suggestion made by any of the parties regarding the appointment of any arbitrator;
- (e) any qualifications required of the arbitrator by the arbitration agreement; and
- 10 (f) such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(7) No appointment by the appointing authority shall be challenged except in accordance with this Act.

15 (8) For the purposes of this Act, the appointing authority shall be the Chairman of the Singapore International Arbitration Centre.

(9) The Chief Justice may, if he thinks fit, by notification published in the *Gazette*, appoint any other person to exercise the powers of the appointing authority under this section.

20 **Grounds for challenge**

14.—(1) Where any person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstance likely to give rise to justifiable doubts as to his impartiality or independence.

25 (2) An arbitrator shall, from the time of his appointment and throughout the arbitration proceedings, without delay disclose any such circumstance as is referred to in subsection (1) to the parties unless they have already been so informed by him.

(3) Subject to subsection (4), an arbitrator may be challenged only if —

- 30 (a) circumstances exist that give rise to justifiable doubts as to his impartiality or independence; or
- (b) he does not possess the qualifications agreed to by the parties.

(4) A party who has appointed or participated in the appointment of any arbitrator may challenge such arbitrator only if he becomes aware of any of the grounds of challenge set out in subsection (3) as may be applicable to the arbitrator after the arbitrator has been appointed.

5 **Challenge procedure**

15 **15.**—(1) Subject to subsection (3), the parties are free to agree on a procedure for challenging an arbitrator.

(2) If the parties have not agreed on a procedure for challenge, a party who intends to challenge an arbitrator shall —

- 10 (a) within 15 days after becoming aware of the constitution of the arbitral tribunal; or
- (b) after becoming aware of any circumstance referred to in section 14(3),

15 send a written statement of the grounds for the challenge to the arbitral tribunal.

(3) The arbitral tribunal shall, unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, decide on the challenge.

20 (4) If a challenge before the arbitral tribunal is unsuccessful, the aggrieved party may, within 30 days after receiving notice of the decision rejecting the challenge, apply to the Court to decide on the challenge and the Court may make such order as it thinks fit.

(5) No appeal shall lie against the decision of the Court under subsection (4).

25 (6) While an application to the Court under subsection (4) is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitration proceedings and make an award.

Failure or impossibility to act

16.—(1) A party may request the Court to remove an arbitrator —

- 30 (a) who is physically or mentally incapable of conducting the proceedings or where there are justifiable doubts as to his capacity to do so; or

(b) who has refused or failed —

(i) to properly conduct the proceedings; or

(ii) to use all reasonable despatch in conducting the proceedings or making an award,

5 and where substantial injustice has been or will be caused to that party.

(2) If there is an arbitral or other institution or person vested by the parties with power to remove an arbitrator, the Court shall not exercise its power of removal unless it is satisfied that the applicant has first exhausted any available recourse to that institution or person.

10 (3) While an application to the Court under this section is pending, the arbitral tribunal, including the arbitrator concerned may continue the arbitration proceedings and make an award.

(4) Where the Court removes an arbitrator, the Court may make such order as it thinks fit with respect to his entitlement, if any, to fees or expenses, or the repayment of any fees or expenses already paid.

(5) The arbitrator concerned is entitled to appear and be heard by the Court before it makes any order under this section.

(6) No appeal shall lie against the decision of the Court made under subsection (4).

20 **Arbitrator ceasing to hold office**

17.—(1) The authority of an arbitrator shall cease upon his death.

(2) An arbitrator shall cease to hold office if —

(a) he withdraws from office under section 15 (3);

25 (b) an order is made under section 15 (4) for the termination of his mandate or his removal;

(c) he is removed by the Court under section 16 or by an institution referred to in section 16 (2); or

(d) the parties agree on the termination of his mandate.

30 (3) The withdrawal of an arbitrator or the termination of an arbitrator's mandate by the parties shall not imply acceptance of the validity of any ground referred to in section 14 (3) or 16 (1).

Appointment of substitute arbitrator

18.—(1) Where an arbitrator ceases to hold office, the parties are free to agree —

- (a) whether and if so how the vacancy is to be filled;
- 5 (b) whether and if so to what extent the previous proceedings should stand; and
- (c) what effect (if any) his ceasing to hold office has on any appointment made by him (alone or jointly).

10 (2) If or to the extent that there is no such agreement, the following subsections shall apply.

(3) Section 13 (appointment of arbitrators) shall apply in relation to the filling of the vacancy as in relation to an original appointment.

(4) The arbitral tribunal (when reconstituted) shall determine whether and if so to what extent the previous proceedings should stand.

15 (5) The reconstitution of the arbitral tribunal shall not affect any right of a party to challenge the previous proceedings on any ground which had arisen before the arbitrator ceased to hold office.

20 (6) The ceasing to hold office by the arbitrator shall not affect any appointment by him (alone or jointly) of another arbitrator, in particular any appointment of a presiding arbitrator.

Decision by panel of arbitrators

19.—(1) In arbitration proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by all or a majority of all its members.

25 (2) Any question of procedure may be decided by a presiding arbitrator if so authorised by the parties or all members of the arbitral tribunal.

Liability of arbitrator

20. An arbitrator shall not be liable for —

- 30 (a) negligence in respect of anything done or omitted to be done in the capacity of the arbitrator; or

- (b) any mistake of law, fact or procedure made in the course of arbitration proceedings or in the making of an arbitral award.

PART VI

JURISDICTION OF ARBITRAL TRIBUNAL

5 **Separability of arbitration clause and competence of arbitral tribunal to rule on its own jurisdiction**

21.—(1) The arbitral tribunal may rule on its own jurisdiction, including any objections to the existence or validity of the arbitration agreement.

10 (2) For the purpose of subsection (1), an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.

(3) A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure (as a matter of law) the invalidity of the arbitration clause.

15 (4) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence.

(5) A party shall not be precluded from raising the plea that the arbitral tribunal does not have jurisdiction by the fact that he has appointed, or participated in the appointment of, an arbitrator.

20 (6) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitration proceedings.

25 (7) Notwithstanding any delay in raising a plea referred to in subsection (4) or (6), the arbitral tribunal may admit such plea if it considers the delay to be justified in the circumstances.

(8) The arbitral tribunal may rule on a plea referred to in this section either as a preliminary question or in an award on the merits.

30 (9) If the arbitral tribunal rules on a plea as a preliminary question that it has jurisdiction, any party may, within 30 days after having received notice of that ruling, apply to the Court to decide the matter.

(10) The leave of the Court is required for any appeal from a decision of the Court under this section.

(11) While an application under subsection (9) is pending, the arbitral tribunal may continue the arbitration proceedings and make an award.

5

PART VII

ARBITRAL PROCEEDINGS

General duties of arbitral tribunal

22. The arbitral tribunal shall act fairly and impartially and shall give each party a reasonable opportunity of presenting his case.

10 **Determination of rules of procedure**

23.—(1) Subject to the provisions of this Act, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

15 (2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Act, conduct the arbitration in such manner as it considers appropriate.

(3) The power conferred on the arbitral tribunal under subsection (2) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

20 **Statements of claim and defence**

24.—(1) Within the period of time agreed by the parties or, failing such agreement, as determined by the arbitral tribunal, the claimant shall state —

- 25 (a) the facts supporting his claim;
- (b) the points at issue; and
- (c) the relief or remedy sought,

and the respondent shall state his defence in respect of the particulars set out in this subsection, unless the parties have otherwise agreed to the required elements of such statements.

(2) The parties may submit to the arbitral tribunal with their statements, all documents they consider to be relevant or other documents which refer to such documents, or other evidence.

5 (3) Except as otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitration proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment, having regard to the delay in making the amendment.

Hearings and written proceedings

10 **25.**—(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall determine if proceedings are to be conducted by oral hearing for the presentation of evidence or oral argument or on the basis of documents and other materials.

15 (2) Unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall, upon the request of a party, hold such hearings at an appropriate stage of the proceedings.

(3) The parties shall be given sufficient notice in advance of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

20 (4) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party.

(5) Any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Consolidation of proceedings and concurrent hearings

25 **26.**—(1) The parties may agree —

(a) that the arbitration proceedings shall be consolidated with other arbitration proceedings; or

(b) that concurrent hearings shall be held,

on such terms as may be agreed.

30 (2) Unless the parties agree to confer such power on the arbitral tribunal, the tribunal has no power to order consolidation of arbitration proceedings or concurrent hearings.

Power to appoint experts

27.—(1) Unless otherwise agreed by the parties, the arbitral tribunal may —

- 5 (a) appoint one or more experts to report to it on specific issues to be determined by the tribunal; and
- (b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

10 (2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present other expert witnesses in order to testify on the points at issue.

General powers exercisable by arbitral tribunal

15 28.—(1) The parties may agree on the powers which may be exercised by the arbitral tribunal for the purposes of and in relation to the arbitration proceedings.

20 (2) Without prejudice to the powers conferred on the arbitral tribunal by the parties under subsection (1), the 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;
- 25 (d) a party or witness to be examined on oath or affirmation, and may for that purpose administer any necessary oath or take any necessary affirmation;
- (e) the preservation and interim custody of any evidence for the purposes of the proceedings;
- 30 (f) samples to be taken from, or any observation to be made of or experiment conducted upon, any property which is or forms part of the subject-matter of the dispute; and

(g) the preservation, interim custody or sale of any property which is or forms part of the subject-matter of the dispute.

5 (3) The power of the arbitral tribunal to order a claimant to provide security for costs as referred to in subsection (2)(a) shall not be exercised by reason only that the claimant is —

(a) an individual ordinarily resident outside Singapore; or

(b) a corporation or an association incorporated or formed under the law of a country outside Singapore, or whose central management and control is exercised outside Singapore.

10 (4) All orders or directions made or given by an arbitral tribunal in the course of an arbitration shall, by leave of the Court, be enforceable in the same manner as if they were orders made by the Court and, where leave is so given, judgment may be entered in terms of the order or direction.

Powers of arbitral tribunal in case of party's default

15 **29.**—(1) The parties may agree on the powers which may be exercised by the arbitral tribunal in the case of a party's failure to take any necessary action for the proper and expeditious conduct of the proceedings.

(2) Unless otherwise agreed by the parties, if, without showing sufficient cause —

20 (a) the claimant fails to communicate his statement of claim in accordance with section 24, the arbitral tribunal may terminate the proceedings;

25 (b) the respondent fails to communicate his statement of defence in accordance with section 24, the arbitral tribunal may continue the proceedings without treating such failure in itself as an admission of the claimant's allegations; and

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

30 (3) If the arbitral tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing his claim, and the delay —

(a) gives rise, or is likely to give rise, to a substantial risk that it is not possible to have a fair resolution of the issues in that claim; or

(b) has caused, or is likely to cause, serious prejudice to the respondent,

5

the tribunal may make an award dismissing the claim.

Witnesses may be summoned by subpoena

30.—(1) Any party to an arbitration agreement may take out a writ of subpoena ad testificandum (writ to compel witness to attend and give evidence) or a writ of subpoena duces tecum (writ to compel witness to attend and give evidence and produce specified documents).

10

(2) The Court may order that a writ of subpoena ad testificandum or a writ of subpoena duces tecum shall be issued to compel the attendance before an arbitral tribunal of a witness wherever he may be within Singapore.

15

(3) The Court may also issue an order under section 38 of the Prisons Act (Cap.247) to bring up a prisoner for examination before an arbitral tribunal.

(4) 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.

20

Court's powers exercisable in support of arbitration proceedings

31.—(1) The Court shall have the following powers for the purpose of and in relation to an arbitration to which this Act applies:

25

(a) the same power to make orders in respect of any of the matters set out in section 28 as it has for the purpose of and in relation to an action or matter in the Court;

(b) securing the amount in dispute;

30

(c) 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

(d) an interim injunction or any other interim measure.

(2) An order of the Court under this section shall cease to have effect in whole or in part if the arbitral tribunal or any such arbitral or other institution or person having power to act in relation to the subject-matter of the order makes an order to which the order of the Court relates.

5 (3) The Court, in exercising any power under this section, shall have regard to —

(a) any application made before the arbitral tribunal; or

(b) any order made by the arbitral tribunal,

in respect of the same issue.

10 (4) Provision may be made by Rules of Court for conferring on the Registrar of the Supreme Court (within the meaning of the Supreme Court of Judicature Act (Cap.322)) or other officer of the Court all or any of the jurisdiction conferred by this Act on the Court.

PART VIII

15 AWARD

Law applicable to substance of dispute

32.—(1) The arbitral tribunal shall decide the dispute in accordance with the law chosen by the parties as applicable to the substance of the dispute.

20 (2) If or to the extent that the parties have not chosen the law applicable to the substance of their dispute, the arbitral tribunal shall apply the law determined by the conflict of laws rules.

(3) The arbitral tribunal may decide the dispute, if the parties so agree, in accordance with such other considerations as are agreed by them or determined by the tribunal.

25 **Awards made on different issues**

33.—(1) Unless otherwise agreed by the parties, the arbitral tribunal may make more than one award at different points in time during the proceedings on different aspects of the matters to be determined.

(2) The arbitral tribunal may, in particular, make an award relating to —

30 (a) an issue affecting the whole claim; or

(b) a part only of the claim, counter-claim or cross-claim, which is submitted to the tribunal for decision.

5 (3) If the arbitral tribunal makes an award under this section, it shall specify in its award, the issue, or claim or part of a claim, which is the subject-matter of the award.

Remedies

34.—(1) The parties may agree on the powers exercisable by the arbitral tribunal as regards remedies.

10 (2) Unless otherwise agreed by the parties, the arbitral tribunal may award any remedy or relief that could have been ordered by the Court if the dispute had been the subject of civil proceedings in that Court.

Interest

35.—(1) The arbitral tribunal may award interest, including interest on a compound basis, on the whole or any part of any sum that —

15 (a) is awarded to any party; or

(b) 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 the award or payment, whichever is applicable.

20 (2) A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

Extension of time for making award

25 36.—(1) Where the time for making an award is limited by the arbitration agreement, the Court may by order, unless otherwise agreed by the parties, extend that time.

(2) An application for an order under this section may be made —

(a) upon notice to the parties, by the arbitral tribunal; or

30 (b) upon notice to the arbitral tribunal and the other parties, by any party to the proceedings.

(3) An application under this section shall not be made unless all available tribunal processes for application of extension of time have been exhausted.

5 (4) The Court shall not make an order under this section unless it is satisfied that substantial injustice would otherwise be done.

(5) The Court may extend the time for such period and on such terms as it thinks fit, and may do so whether or not the time previously fixed by or under the arbitration agreement or by a previous order has expired.

10 (6) The leave of the Court shall be required for any appeal from a decision of the Court under this section.

Award by consent

15 **37.**—(1) If, during arbitration proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An arbitral award on agreed terms —

(a) shall be made in accordance with section 38;

(b) shall state that it is an award; and

20 (c) shall have the same status and effect as any other award on the merits of the case.

(3) An award on agreed terms may, with the leave of the Court, 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.

25 Form and contents of award

38.—(1) The award shall be made in writing and shall be signed —

(a) in the case of a single arbitrator, by the arbitrator himself; or

30 (b) in the case of 2 or more arbitrators, by all the arbitrators or the majority of the arbitrators provided that the reason for any omitted signature of any arbitrator is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no grounds are to be stated or the award is an award on agreed terms under section 37.

5 (3) The date of the award and place of arbitration shall be stated in the award.

(4) The award shall be deemed to have been made at the place of arbitration.

10 (5) After the award is made, a copy of the award signed by the arbitrators in accordance with subsection (1) shall be delivered to each party.

Costs of arbitration

39.—(1) Any costs directed by an award to be paid shall, unless the award otherwise directs, be taxed by the Registrar of the Supreme Court within the meaning of the Supreme Court of Judicature Act (Cap. 322).

15 (2) Subject to subsection (3), any provision in an arbitration agreement to the effect that the parties or any party shall in any event pay their or his own costs of the reference or award or any part thereof shall be void; and this Act shall, in the case of an arbitration agreement containing any such provision, have effect as if there were no such provision.

20 (3) Subsection (2) shall not apply where a provision in an arbitration agreement to the effect that the parties or any party shall in any event pay their or his own costs is part of an agreement to submit to arbitration a dispute which has arisen before the making of such agreement.

25 (4) If no provision is made by an award with respect to the costs of the reference, any party to the reference may, within 14 days of the delivery of the award or such further time as the arbitral tribunal may allow, apply to the arbitral tribunal for an order directing by and to whom such costs shall be paid.

30 (5) The arbitral tribunal shall, after giving the parties a reasonable opportunity to be heard, amend its award by adding thereto such directions as it thinks fit with respect to the payment of the costs of the reference.

Fees of arbitrator

40.—(1) The parties are jointly and severally liable to pay to the arbitrators such reasonable fees and expenses as are appropriate in the circumstances.

5 (2) Unless the fees of the arbitral tribunal have been fixed by written agreement or 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 of the Supreme Court within the meaning of the Supreme Court of Judicature
10 Act (Cap. 322).

Power to withhold award in case of non-payment

41.—(1) The arbitral tribunal may refuse to deliver an award to the parties if the parties have not made full payment of the fees and expenses of the arbitrators.

15 (2) Where subsection (1) applies, a party to the arbitration proceedings may, upon notice to the other parties and the arbitral tribunal, apply to the Court, which may order that —

(a) the arbitral tribunal shall deliver the award upon payment into
20 Court by the applicant of the fees and expenses demanded, or such lesser amount as the Court may specify;

(b) the amount of the fees and expenses demanded shall be taxed by the Registrar of the Supreme Court; and

(c) out of the money paid into Court, the arbitral tribunal shall be
25 paid such fees and expenses as may be found to be properly payable and the balance of such money (if any) shall be paid out to the applicant.

(3) A taxation of fees under this section shall be reviewed in the same manner as a taxation of costs.

30 (4) The arbitrator shall be entitled to appear and be heard on any taxation or review of taxation under this section.

(5) For the purpose of this section, the amount of fees and expenses properly payable is the amount the applicant is liable to pay under section

40 or under any agreement relating to the payment of fees and expenses of the arbitrators.

(6) No application to the Court may be made unless the Court is satisfied that the applicant has first exhausted any available arbitral process for appeal or review of the amount of the fees or expenses demanded by the arbitrators.

(7) This section shall apply to any arbitral or other institution or person vested with powers by the parties in relation to the delivery of the award by the tribunal and any reference to the fees and expenses of the arbitrators shall be construed as including the fees and expenses of that institution or person.

(8) The leave of the Court shall be required for any appeal from a decision of the Court under this section.

Court may charge property with payment of solicitor's costs in arbitration

42. Section 117 of the Legal Profession Act (Cap. 161) (which empowers a Court in which a solicitor has been employed in any proceeding to charge property recovered or preserved in the proceeding with the payment of his costs) shall apply as if an arbitration were a proceeding in the Court, and the Court may make declarations and orders accordingly.

Correction or interpretation of award and additional award

43.—(1) A party may, within 30 days of the receipt of the award, unless another period of time has been agreed upon by the parties —

(a) upon notice to the other parties, request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or other error of similar nature; and

(b) upon notice to the other parties, request the arbitral tribunal to give an interpretation of a specific point or part of the award, if such request is also agreed to by the other parties.

(2) If the arbitral tribunal considers the request in subsection (1) to be justified, the tribunal shall make such correction or give such

interpretation within 30 days of the receipt of the request and such interpretation shall form part of the award.

5 (3) The arbitral tribunal may correct any error of the type referred to in subsection (1)(a) or give an interpretation referred to in subsection (1)(b), on its own initiative, within 30 days of the date of the award.

(4) Unless otherwise agreed by the parties, a party may, within 30 days of receipt of the award and upon notice to the other party, request the arbitral tribunal to make an additional award as to claims presented during the arbitration proceedings but omitted from the award.

10 (5) If the arbitral tribunal considers the request in subsection (4) to be justified, the tribunal shall make the additional award within 60 days of the receipt of such request.

15 (6) The arbitral tribunal may, if necessary, extend the period of time within which it shall make a correction, interpretation or an additional award under this section.

(7) Section 38 shall apply to an award in respect of which a correction or interpretation has been made under this section and to an additional award.

Effect of award

20 **44.—**(1) An award made by the arbitral tribunal pursuant to an arbitration agreement shall be final and binding on the parties and on any person claiming through or under them and may be relied upon by any of the parties by way of defence, set-off or otherwise in any proceedings in any court of competent jurisdiction.

25 (2) Except as provided in section 43, upon an award being made, including an award made in accordance with section 33, the arbitral tribunal shall not vary, amend, correct, review, add to or revoke the award.

(3) For the purposes of subsection (2), an award is made when it has been signed and delivered in accordance with section 38.

30 (4) This section shall not affect the right of a person to challenge the award by any available arbitral process of appeal or review or in accordance with the provisions of this Act.

PART IX

POWERS OF COURT IN RELATION TO AWARD

Determination of preliminary point of law

5 **45.**—(1) Unless otherwise agreed by the parties, the Court may, on the application of a party to the arbitration proceedings who has given notice to the other parties, determine any question of law arising in the course of the proceedings which the Court is satisfied substantially affects the rights of one or more of the parties.

10 (2) The Court shall not consider an application under this section unless —

 (a) it is made with the agreement of all parties to the proceedings; or

 (b) it is made with the permission of the arbitral tribunal and the Court is satisfied that —

15 (i) the determination of the question is likely to produce substantial savings in costs; and

 (ii) the application is made without delay.

20 (3) The application shall identify the question of law to be determined and, except where made with the agreement of all parties to the proceedings, shall state the grounds on which it is said that the question should be decided by the Court.

 (4) Unless otherwise agreed by the parties, the arbitral tribunal may continue the arbitral proceedings and make an award while an application to the Court under this section is pending.

25 (5) Except with the leave of the Court, no appeal shall lie from a decision of the Court on whether the conditions in subsection (2) are met.

 (6) The decision of the Court on a question of law shall be a judgment of the Court for the purposes of an appeal to the Court of Appeal.

30 (7) The Court may give leave to appeal against the decision of the Court in subsection (6) only if the question of law before it is one of general importance, or is one which for some other special reason should be considered by the Court of Appeal.

Enforcement of award

46.—(1) An award made by the arbitral tribunal pursuant to an arbitration agreement may, with leave of the Court, be enforced in the same manner as a judgment or order of the Court to the same effect.

5 (2) Where leave of the Court is so granted, judgment may be entered in the terms of the award.

No judicial review of award

47. The Court shall not have jurisdiction to confirm, vary, set aside or remit an award on an arbitration agreement except where so provided in this Act.

Court may set aside award

48.—(1) An award may be set aside by the Court —

- (a) if the party who applies to the Court to set aside the award proves to the satisfaction of the Court that —
- 15 (i) a party to the arbitration agreement was under some incapacity;
- (ii) the arbitration agreement is not valid under the law to which the parties have subjected it, or failing any indication thereon, under the laws of Singapore;
- 20 (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings or was otherwise unable to present his case;
- 25 (iv) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, except that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set
- 30 aside;
- (v) the composition of the arbitral tribunal or the arbitral procedure is not in accordance with the agreement of the

parties, unless such agreement is contrary to any provisions of this Act from which the parties cannot derogate, or, in the absence of such agreement, is contrary to the provisions of this Act;

5 (vi) the making of the award was induced or affected by fraud or corruption;

(vii) 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; or

10 (b) if the Court finds that —

(i) the subject-matter of the dispute is not capable of settlement by arbitration under this Act; or

(ii) the award is contrary to public policy.

15 (2) An application for setting aside an award may not be made after the expiry of 3 months from the date on which the party making the application had received the award, or if a request has been made under section 43, from the date on which that request had been disposed of by the arbitral tribunal.

20 (3) When a party applies to the Court to set aside an award under this section, the Court may, where appropriate and so requested by a party, suspend the proceedings for setting aside an award, for such period of time as it may determine, to allow the arbitral tribunal to resume the arbitration proceedings or take such other action as may eliminate the grounds for setting aside an award.

25 **Appeal against award**

49.—(1) A party to arbitration proceedings may (upon notice to the other parties and to the arbitral tribunal) appeal to the Court on a question of law arising out of an award made in the proceedings.

30 (2) Notwithstanding subsection (1), the parties may agree to exclude the jurisdiction of the Court under this section and an agreement to dispense with reasons for the arbitral tribunal's award shall be treated as an agreement to exclude the jurisdiction of the Court under this section.

(3) An appeal shall not be brought under this section except —

(a) with the agreement of all the other parties to the proceedings; or

(b) with the leave of the Court.

(4) The right to appeal under this section shall be subject to the restrictions in section 50.

5 (5) Leave to appeal shall be given only if the Court is satisfied that —

(a) the determination of the question will substantially affect the rights of one or more of the parties;

(b) the question is one which the arbitral tribunal was asked to determine;

10 (c) on the basis of the findings of fact in the award —

(i) the decision of the arbitral tribunal on the question is obviously wrong; or

15 (ii) the question is one of general public importance and the decision of the arbitral tribunal is at least open to serious doubt; and

(d) despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the Court to determine the question.

20 (6) An application for leave to appeal under this section shall identify the question of law to be determined and state the grounds on which it is alleged that leave to appeal should be granted.

(7) The leave of the Court shall be required for any appeal from a decision of the Court under this section to grant or refuse leave to appeal.

(8) On an appeal under this section, the Court may by order —

25 (a) confirm the award;

(b) vary the award;

(c) remit the award to the arbitral tribunal, in whole or in part, for reconsideration in the light of the Court's determination; or

(d) set aside the award in whole or in part.

(9) The Court shall not exercise its power to set aside an award, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the arbitral tribunal for reconsideration.

5 (10) The decision of the Court on an appeal under this section shall be treated as a judgment of the Court for the purposes of an appeal to the Court of Appeal.

10 (11) The Court may give leave to appeal against the decision of the Court in subsection (10) only if the question of law before it is one of general importance, or one which for some other special reason should be considered by the Court of Appeal.

Supplementary provisions to challenge appeal

50.—(1) This section shall apply to an application or appeal under section 45, 48 or 49.

15 (2) An application or appeal may not be brought if the applicant or appellant has not first exhausted —

(a) any available arbitral process of appeal or review; and

(b) any available recourse under section 43 (correction or interpretation of award and additional award).

20 (3) Any application or appeal shall be brought within 28 days of the date of the award or, if there has been any arbitral process of appeal or review, of the date when the applicant or appellant was notified of the result of that process.

(4) If on an application or appeal it appears to the Court that the award —

25 (a) does not contain the arbitral tribunal's reasons; or

(b) does not set out the arbitral tribunal's reasons in sufficient detail to enable the Court to properly consider the application or appeal,

the Court may order the arbitral tribunal to state the reasons for its award in sufficient detail for that purpose.

30 (5) Where the Court makes an order under subsection (4), it may make such further order as it thinks fit with respect to any additional costs of the arbitration resulting from its order.

(6) The Court may order the applicant or appellant to provide security for the costs of the application or appeal, and may direct that the application or appeal be dismissed if the order is not complied with.

5 (7) The power to order security for costs shall not be exercised by reason only that the applicant or appellant is —

(a) an individual ordinarily resident outside Singapore; or

(b) a corporation or association incorporated or formed under the law of a country outside Singapore or whose central management and control is exercised outside Singapore.

10 (8) The Court may order that any money payable under the award shall be brought into Court or otherwise secured pending the determination of the application or appeal, and may direct that the application or appeal be dismissed if the order is not complied with.

15 (9) The Court may grant leave to appeal subject to conditions to the same or similar effect as an order under subsection (6) or (8) and this shall not affect the general discretion of the Court to grant leave subject to conditions.

Effect of order of Court upon appeal or challenge against award

20 **51.**—(1) Where the Court makes an order under section 45, 48 or 49 with respect to an award, subsections (2), (3) and (4) shall apply.

(2) Where the award is varied by the Court, the variation shall have effect as part of the arbitral tribunal's award.

25 (3) Where the award is remitted to the arbitral tribunal, in whole or in part, for reconsideration, the tribunal shall make a fresh award in respect of the matters remitted within 3 months of the date of the order for remission or such longer or shorter period as the Court may direct.

30 (4) Where the award is set aside or declared to be of no effect, in whole or in part, the Court may also order that any provision that an award is a condition precedent to the bringing of legal proceedings in respect of a matter to which the arbitration agreement applies, shall be of no effect as regards the subject-matter of the award or, as the case may be, the relevant part of the award.

Application for leave of Court, etc.

52.—(1) An application for the leave of the Court to appeal or make an application referred to in section 21 (10), 36 (6) or 49 (3) (b) or (6) shall be made in such manner as may be prescribed in the Rules of Court.

5 (2) The Court shall determine an application for leave to appeal without a hearing unless it appears to the Court that a hearing is required.

(3) For the purposes of this section —

(a) an application for leave of the Court may be heard and determined by a Judge in Chambers; and

10 (b) the Court of Appeal shall have the like powers and jurisdiction on the hearing of such applications as the High Court or any Judge in Chambers has on the hearing of such applications.

PART X

MISCELLANEOUS

15 **Notice and other requirements in connection with legal proceedings**

53.—(1) References in this Act to an application, appeal or other step in relation to legal proceedings being taken upon notice to the other parties to the arbitration proceedings, or to the arbitral tribunal, are references to such notice of the originating process as is required by the Rules of Court.

20 (2) Subject to any provision made by Rules of Court, a requirement to give notice to the arbitral tribunal of legal proceedings shall be construed —

(a) if there is more than one arbitrator, as a requirement to give notice to each of them; and

25 (b) if the arbitral tribunal is not fully constituted, as a requirement to give notice to any arbitrator who has been appointed.

(3) References in this Act to making an application or appeal to the Court within a specified period are references to the issue within that period of the appropriate originating process in accordance with the Rules of Court.

30

5 (4) Where any provision of this Act requires an application or appeal to be made to the Court within a specified time, the Rules of Court relating to the reckoning of periods, the extending or abridging of periods, and the consequences of not taking a step within the period prescribed by the Rules, shall apply in relation to that requirement.

(5) Provision may be made by Rules of Court amending the provisions of this Act —

- 10 (a) with respect to the time within which any application or appeal to the Court must be made;
- (b) so as to keep any provision made by this Act in relation to arbitral proceedings in step with the corresponding provision of the Rules of Court applying in relation to proceedings in the Court; or
- 15 (c) so as to keep any provision made by this Act in relation to legal proceedings in step with the corresponding provision of the Rules of Court applying generally in relation to proceedings in the Court.

(6) Nothing in this section shall affect the generality of the power to make Rules of Court.

20 **Powers of Court and Registrar**

54. Provision may be made by Rules of Court for conferring on the Registrar of the Supreme Court or other officer of the Court all or any of the jurisdiction conferred by this Act on the Court.

Rules of Court

25 **55.** The Rules Committee constituted under section 80 of the Supreme Court of Judicature Act (Cap. 322) may make Rules of Court regulating the practice and procedure of any court in respect of any matter under this Act.

Proceedings to be heard otherwise than in open court

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

Restrictions on reporting of proceedings heard otherwise than in open court

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

5 (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.

10 (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

15 (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.

20 (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 —

25 (a) give directions as to the action that shall be taken to conceal that matter in those reports; and

30 (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.

Application to references under statutory powers

58. This Act shall apply in relation to every arbitration under any other written law (other than the International Arbitration Act (Cap. 143A)), as

if the arbitration were commenced pursuant to an arbitration agreement, except in so far as this Act is inconsistent with that other written law.

Immunity of arbitral institutions

5 **59.**—(1) The appointing authority, or an arbitral or other institution or person designated or requested by the parties to appoint or nominate an arbitrator, shall not be liable for anything done or omitted in the discharge or purported discharge of that function unless the act or omission is shown to have been in bad faith.

10 (2) The appointing authority, or an arbitral or other institution or person by whom an arbitrator is appointed or nominated, shall not be liable, by reason only of having appointed or nominated him, for anything done or omitted by the arbitrator, his employees or agents in the discharge or purported discharge of his functions as arbitrator.

15 (3) This section shall apply to an employee or agent of the appointing authority or of an arbitral or other institution or person as it applies to the appointing authority, institution or person himself.

Service of notices

20 **60.**—(1) The parties are free to agree on the manner of service of any notice or other document required or authorised to be given or served in pursuance of the arbitration agreement or for the purposes of the arbitration proceedings.

(2) If or to the extent that there is no such agreement as is referred to in subsection (1), subsections (3) and (4) shall apply.

25 (3) A notice or other document may be served on a person by any effective means.

(4) If a notice or other document is addressed, prepaid and delivered by post —

30 (a) to the addressee's usual or last known place of residence or, if he is or has been carrying on a trade, profession or business, his usual or last known place of business; or

(b) if the addressee is a body corporate, to the body corporate's registered office,

it shall be treated as effectively served.

(5) This section shall not apply to the service of documents for the purposes of legal proceedings, for which provision is made by Rules of Court.

- 5 (6) References in this Part to a notice or other document include any form of communication in writing and references to giving or serving a notice or other document shall be construed accordingly.

Reckoning periods of time

10 **61.**—(1) The parties may agree on the method of reckoning periods of time for the purposes of —

- (a) any provision agreed by them; or
- (b) any provision of this Act having effect in default of such agreement.

15 (2) If or to the extent that the parties have not agreed on the method of reckoning time, periods of time shall be reckoned in accordance with this section.

(3) Where the act is required to be done within a specified period after or from a specified date, the period shall begin immediately after that date.

20 (4) Where an act is required to be done within or not less than a specified period before a specified date, the period shall end immediately before that date.

(5) Where the act is required to be done, a specified number of clear days after a specified date, at least that number of days shall intervene between the day on which the act is done and that date.

25 (6) Where the period in question being a period of 7 days or less would include a Saturday, Sunday or a public holiday, that day shall be excluded.

Appointment of mediator

30 **62.**—(1) In any case where an agreement provides for the appointment of a mediator by a person who is not one of the parties and that person refuses to make the appointment or does not make the appointment 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 of the Singapore Mediation Centre may, on the application of any party to the agreement, appoint a mediator who shall have the like powers to act in the mediation proceedings as if he had been appointed in accordance with the terms of the agreement.

5 (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 Mediation Centre under subsection (1).

(3) Where an arbitration agreement provides for the appointment of a mediator and further provides that the person so appointed shall act as an arbitrator in the event of the mediation proceedings failing to produce a settlement acceptable to the parties —

15 (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 mediator in connection with some or all of the matters referred to arbitration; and

(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 mediator unless a contrary intention appears in the arbitration agreement.

20 (4) Unless a contrary intention appears therein, an agreement which provides for the appointment of a mediator shall be deemed to contain a provision that in the event of the mediation 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 mediator 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 mediation proceedings shall thereupon terminate.

Power of arbitrator to act as mediator

30 **63.—**(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 may act as a mediator.

(2) An arbitrator acting as a mediator —

(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 arbitration proceedings as confidential, unless that party otherwise agrees or unless subsection (3) applies.

5

(3) Where confidential information is obtained by an arbitrator from a party to the arbitration proceedings during mediation proceedings and those proceedings terminate without the parties reaching agreement in settlement of their dispute, the arbitrator shall before resuming the arbitration proceedings disclose to all other parties to the arbitration proceedings as much of that information as he considers material to the arbitration proceedings.

10

(4) No objection shall be taken to the conduct of arbitration proceedings by a person solely on the ground that that person had acted previously as a mediator in accordance with this section.

15

(5) For the purposes of this section and section 62 —

(a) any reference to a mediator shall include a reference to any person who acts as a conciliator;

(b) any reference to mediation proceedings shall include a reference to conciliation proceedings.

20

Act to bind Government

64. This Act shall bind the Government.

Repeal and transitional provisions

65.—(1) The Arbitration Act (Cap. 10) is repealed.

(2) This Act shall apply to arbitration proceedings commenced on or after the appointed day but the parties may in writing agree that this Act shall apply to arbitration proceedings commenced before the appointed day.

25

(3) Notwithstanding subsection (1), where the arbitration proceedings were commenced before the appointed day, the law governing the arbitration agreement and the arbitration shall be the law which would have applied if this Act had not been enacted.

30

(4) Where an arbitration agreement made or entered into before the appointed day provides for the appointment of an umpire or an arbitral tribunal comprising 2 arbitrators, the law to the extent that it governs the appointment, role and function of the umpire shall be the law which would have applied if this Act had not been enacted.

(5) For the purposes of this section, arbitration 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 arbitration proceedings, then on that date.

(6) For the purposes of this section, “appointed day” means the date of commencement of this Act.

Consequential amendments to Bankruptcy Act

66. The Bankruptcy Act (Cap.20) is amended by inserting, immediately after section 148, the following section:

“Arbitration agreements to which bankrupt is a party

148A.—(1) This section shall apply where a bankrupt had become party to a contract containing an arbitration agreement before the commencement of his bankruptcy.

(2) If the Official Assignee adopts the contract, the arbitration agreement shall be enforceable by or against the Official Assignee in relation to matters arising from or connected with the contract.

(3) If the Official Assignee does not adopt the contract and a matter to which the arbitration agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings —

(a) the Official Assignee; or

(b) any other party to the agreement,

may apply to the court which may, if it thinks fit in all the circumstances of the case, order that the matter be referred to arbitration in accordance with the arbitration agreement.

(4) In this section, “court” means the court which has jurisdiction in the bankruptcy proceedings.”.

Consequential amendments to Limitation Act

67.—(1) Section 30 of the Limitation Act (Cap.163) is repealed.

5 (2) Nothing in this section shall affect the application of section 30 of the Limitation Act in respect of arbitration proceedings under the repealed Arbitration Act (Cap.10) or the International Arbitration Act (Cap.143A), as the case may be, commenced before the date of commencement of this Act.

10

EXPLANATORY STATEMENT

This Bill seeks to provide a new framework of rules applicable to arbitrations and to repeal the Arbitration Act (Cap. 10).

PART I

PRELIMINARY

Clause 1 relates to the short title and commencement.

Clause 2 defines certain terms used in the Bill.

Clause 3 sets out the scope of application of the Bill.

PART II

ARBITRATION AGREEMENT

Clause 4 sets out what constitutes an arbitration agreement.

Clause 5 provides that the death of any party to an arbitration agreement shall not cause the agreement to be discharged or cause an arbitrator’s authority to be revoked.

PART III

STAY OF LEGAL PROCEEDINGS

Clause 6 provides for the circumstances in which an application to a court to stay legal proceedings in favour of enforcement of the arbitration agreement may be brought and how the court should treat such applications. The clause clarifies that an application to stay legal proceedings may be made before the court in which the proceedings were commenced, including a District Court and Magistrate’s Court. The

clause also allows the court to discontinue certain stayed actions after at least 2 years since the last step in legal proceedings was taken, subject to certain safeguards.

Clause 7 relates to the court's powers in a case where it stays proceedings under clause 6 where property has been arrested.

Clause 8 provides that the court may refer issues that arise by way of interpleader to arbitration.

PART IV

COMMENCEMENT OF ARBITRATION PROCEEDINGS

Clause 9 determines when arbitration proceedings are deemed to be commenced.

Clause 10 confers power on the Court, in certain circumstances, to extend a time limit imposed by an arbitration agreement for the commencement of an arbitration.

Clause 11 provides for the application of the Limitation Act (Cap. 163) to the Bill.

PART V

ARBITRAL TRIBUNAL

Clause 12 provides that the number of arbitrators may be determined by the parties, failing which there shall be one arbitrator.

Clause 13 provides for the procedure for appointment of the arbitrators. The clause allows the Chairman of the Singapore International Arbitration Centre to act as the default appointing authority. The mandatory considerations the appointing authority has to have regard to in the appointment of an arbitrator are set out. Although no reference is made to an arbitration with 2 arbitrators, the clause does not prevent the parties from appointing an arbitral tribunal comprising 2 arbitrators.

Clause 14 provides for an arbitrator to disclose any circumstance which may give rise to doubts of his impartiality or independence and also provides for grounds upon which such arbitrator may be challenged.

Clause 15 sets out the procedure for challenge against the appointment of any arbitrator under clause 13.

Clause 16 provides for any party to apply to the Court to terminate the appointment of an arbitrator.

Clause 17 provides for the circumstances under which an arbitrator would cease to hold office.

Clause 18 provides the procedure for appointment of a substitute arbitrator.

Clause 19 relates to how a decision is reached by the arbitral tribunal.

Clause 20 confers immunity on an arbitrator for negligence in the capacity of arbitrator or mistake of law, fact or procedure made in the course of arbitral proceedings or in the making of an award.

PART VI

JURISDICTION OF ARBITRAL TRIBUNAL

Clause 21 provides for the separability of the arbitration clause from a contract and that the arbitral tribunal may rule on a question concerning its own jurisdiction.

PART VII

ARBITRAL PROCEEDINGS

Clause 22 sets out the general duties of the arbitral tribunal in the conduct of the proceedings.

Clause 23 provides that the parties may determine rules of procedure applicable to the arbitration proceedings.

Clause 24 sets out the contents of the statements of claim and defence and how amendments may be made to them.

Clause 25 sets out how a hearing or arbitration proceeding may be carried out.

Clause 26 provides that parties may agree to hold consolidated proceedings or concurrent hearings.

Clause 27 relates to the power of the arbitral tribunal to appoint experts.

Clause 28 sets out the general powers exercisable by the arbitral tribunal including ordering security for costs, discovery and preservation of evidence.

Clause 29 sets out the powers exercisable by the arbitral tribunal in the event that the parties fail to ensure proper and expeditious conduct of the arbitration proceedings.

Clause 30 makes available to parties to arbitration proceedings the same processes as are available to parties to litigation to compel the attendance of witnesses or the production of documents.

Clause 31 confers the same powers on the Court in aid of an arbitration as it has for the purpose of Court proceedings. Such powers include the power to order the securing of the amount in dispute, Mareva injunctions and Anton Piller injunctions.

PART VIII

AWARD

Clause 32 deals with the question of which laws or rules are to be applied in deciding the substance of the dispute. The clause allows the arbitral tribunal to act as “amiable compositeur” and make an award “ex aequo et bono” if the parties so agree.

In general, “*amiable compositeur*” refers to the authorisation given to an arbitral tribunal to choose freely the law applicable to the substance of the dispute, without any reference to a conflicts of law rule, whether the law is national or anational or based on equity and good conscience. In general, “*ex aequo et bono*” refers to the authorisation given to an arbitral tribunal to apply general principles of law free from any legal system.

Clause 33 provides that the arbitral tribunal may make more than one award at different points in time and on different issues or on different parts of a claim, counter-claim or cross-claim.

Clause 34 enables the parties to agree on the powers exercisable by the arbitral tribunal in relation to remedies.

Clause 35 allows the arbitral tribunal to award interest on an award including interest on a compound basis in respect of the time before the award is made. After the award is made, the interest on the award will be the same as that of a judgment debt.

Clause 36 provides that the Court may extend any time limit for making the award set out in the arbitration agreement if satisfied that not to do so would result in substantial injustice.

Clause 37 provides that the arbitral tribunal may make an award on the agreed terms between the parties which may be enforced by the Court in the same manner as the enforcement of a judgment.

Clause 38 sets out the form and contents of the award.

Clause 39 provides that costs of an arbitration may be taxed by the Registrar of the Supreme Court and that an agreement to pay own costs in any event shall be void unless such agreement was part of an agreement to submit to arbitration a dispute which has arisen before the making of the latter mentioned agreement.

Clause 40 provides that the parties are jointly and severally liable for the fees and expenses of an arbitrator.

Clause 41 confers on the arbitral tribunal a lien on its award to secure payment of its fees and for taxation of the fees demanded.

Clause 42 provides that the Court may exercise the power of charging any party with payment of solicitor’s costs as if the arbitral proceedings were in Court.

Clause 43 sets out how a party may apply to the arbitral tribunal to —

- (a) correct certain errors in the award;
- (b) give an interpretation on a specific part of the award; or
- (c) make an additional award on claims presented during the proceedings but omitted from the award.

The clause also allows the arbitral tribunal to correct a typographical or clerical error or give an interpretation of a specific point of the award on its own initiative.

Clause 44 provides that an award made by the arbitral tribunal is final and binding on the parties and on any person claiming through or under them. The clause also states clearly that except as provided in clause 43, an arbitral tribunal shall not revisit an award made in accordance with clause 38. Every award including an award made at different points of time on different issues or different parts of a claim, counter-claim or cross-claim is final and may not be varied, amended, corrected, reviewed, added to or revoked except as allowed under clause 43.

PART IX

POWERS OF COURT IN RELATION TO AWARD

Clause 45 provides that the Court may determine a preliminary point of law arising in the arbitration proceedings. The Court may consider only those questions of law which substantially affect the rights of one or more of the parties.

Clause 46 provides that an award may be enforced by the Court in the same manner as if it were a judgment.

Clause 47 provides that awards may not be set aside or remitted by judicial review proceedings.

Clause 48 sets out the circumstances when an award may be set aside by the Court.

Clause 49 provides for appeals against the award on a point of law and how such appeal may be brought.

Clause 50 restricts applications that may be made under clause 45, 48 or 49.

Clause 51 concerns the consequences on an award which flow from the decisions of the Court in an appeal.

Clause 52 relates to how an application for leave of the Court under various provisions may be made and disposed of.

PART X

MISCELLANEOUS

Clause 53 provides that notice of any step in legal proceedings to be given to other parties to the arbitration is the same as that required under the Rules of Court.

Clause 54 deals with the powers of the Registrar of the Supreme Court under the Bill.

Clause 55 allows rules relating to the practice and procedure of arbitration to be made under Rules of Court.

Clauses 56 and 57 provide for proceedings under the Bill not to be heard in open court, and for restrictions on the reporting of proceedings heard otherwise than in open court.

Clause 58 relates to the application of the Bill to statutory arbitrations.

Clause 59 introduces limited immunity for the appointing authority and arbitral or other institutions. Immunity is extended to the function of the appointment or nomination of arbitrators unless it can be shown that bad faith was involved. The appointing authority and arbitral or other institutions are also not liable for the actions of the arbitrators they appoint.

Clause 60 provides for service of notices under the Bill.

Clause 61 relates to the reckoning of periods of time.

Clause 62 provides for the appointment and duties of a mediator and for the conduct of mediation proceedings (where there is an agreement for such appointment).

Clause 63 allows an arbitrator to act as a mediator with the consent of the parties. This clause and clause 62 are applicable to conciliators and conciliation proceedings.

Clause 64 states that the Bill binds the Government.

Clauses 65 to 67 provide for the repeal of the Arbitration Act (Cap. 10) and the transitional provisions and for consequential amendments, respectively. Consequential amendments are made to the Bankruptcy Act (Cap. 20) and the Limitation Act (Cap. 163).

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

TABLE OF DERIVATIONS

Arbitration Bill 2001		Derivations				
Section Heading	Clause	UNCITRAL Model Law	UK Arbitration Act	International Arbitration Act (Cap.143A)	Arbitration Act (Cap.10)	Others
Short title and commencement	1	—	—	—	—	—
Interpretation	2	Art 2	—	s 2	—	—
Application of Act	3	Art 1 (modified)	—	—	—	—
Arbitration agreement	4	Art 7 (modified)	—	—	—	—
Arbitration agreement not to be discharged by death of party	5	—	—	—	s 4 (modified)	—
Stay of legal proceedings	6	—	—	s 6	s 7 (modified)	—
Court's powers on stay of proceedings	7	—	—	s 7	—	—
Reference of interpleader issue to arbitration	8	—	s 10(1)	—	s 27(2)	—
Commencement of arbitration proceedings	9	Art 21	—	—	—	—
Powers of Court to extend time for beginning of arbitration proceedings	10	—	s 12(6) (modified)	—	37 (modified)	—
Application of Limitation Act	11	—	s 13(1) & (2)	—	—	—
Number of arbitrators	12	Art 10	—	s 9	—	—
Appointment of arbitrators	13	Art 11, part of (modified)	—	—	—	—
Grounds for challenge	14	Art 12	—	—	—	—
Challenge procedure	15	Art 13	—	—	—	—

Arbitration Bill 2001		Derivations				
Section Heading	Clause	UNCITRAL Model Law	UK Arbitration Act	International Arbitration Act (Cap.143A)	Arbitration Act (Cap.10)	Others
Failure or impossibility to act	16	—	s 24(1)(c) & (d) & (2) to (5)	—	—	—
Arbitrator ceasing to hold office	17	—	—	—	—	—
Appointment of substitute arbitrator	18	Art 15 (modified)	s 27	—	—	—
Decision by panel of arbitrators	19	Art 29	—	—	—	—
Liability of arbitrator	20	—	—	s 25	—	—
Separability of arbitration clause and competence of arbitral tribunal to rule on its own jurisdiction	21	Art 16	—	—	—	—
General duties of arbitral tribunal	22	Art 18	s 33(1)(a)	—	—	—
Determination of rules of procedure	23	Art 19	—	—	—	—
Statements of claim and defence	24	Art 23	—	—	—	—
Hearings and written proceedings	25	Art 24	—	—	—	—
Consolidation of proceedings and concurrent hearings	26	—	s 35	—	—	—
Power to appoint experts	27	Art 26	—	—	—	—
General powers exercisable by arbitral tribunal	28	—	s 38	s 12(1) (modified)	—	—
Powers of arbitral tribunal in case of party's default	29	Art 25 (modified)	s 41	—	—	—
Witnesses may be summoned by subpoena	30	—	—	s 13 & s 14	—	—

Arbitration Bill 2001		Derivations				
Section Heading	Clause	UNCITRAL Model Law	UK Arbitration Act	International Arbitration Act (Cap.143A)	Arbitration Act (Cap.10)	Others
Court's powers exercisable in support of arbitration proceedings	31	—	s 44(6)	s 12(6)	—	—
Law applicable to substance of dispute	32	Art 28	s 46	—	—	—
Awards on different issues	33	—	s 47	—	—	—
Remedies	34	—	s 48 (modified)	—	—	—
Interest	35	—	—	s 12(4)(b) & s 20	s 33	—
Extension of time for making an award	36	—	s 50 (modified)	—	—	—
Award by consent	37	Art 30	—	s 18 (modified)	—	—
Form and contents of award	38	Art 31	—	—	—	—
Costs of arbitration	39	—	—	—	s 34 (modified)	—
Fees of arbitrator	40	—	—	s 21(2) (modified)	—	—
Power to withhold award in case of non-payment	41	—	s 56 (modified)	—	—	—
Court may charge property with payment of solicitor's costs in arbitration	42	—	—	—	s 38	—
Correction or interpretation of award and additional award	43	Art 33	—	—	—	—
Effect of award	44	—	s 58	s 29(2)	—	—

Arbitration Bill 2001		Derivations				
Section Heading	Clause	UNCITRAL Model Law	UK Arbitration Act	International Arbitration Act (Cap.143A)	Arbitration Act (Cap.10)	Others
Determination of preliminary point of law	45	—	s 45	—	s 29 (modified)	—
Enforcement of award	46	—	—	—	s 20	—
No judicial review of award	47	—	—	—	s 28(1)	—
Court may set aside award	48	Art 34 (modified)	—	s 24(1)(vi) & (vii)	—	—
Appeal against award	49	—	s 69 (modified)	—	—	—
Supplementary provisions to challenge appeal	50	—	s 70 (modified)	—	—	—
Effect of order of Court upon appeal or challenge against award	51	—	S 71 (modified)	—	—	—
Application for leave of Court, etc.	52	—	—	—	—	—
Notice and other requirements in connection with legal proceedings	53	—	s 80 (modified)	—	—	—
Powers of Court and Registrar	54	—	—	—	s 39	—
Rules of Court	55	—	—	s 35	—	—
Proceedings to be heard otherwise than in open court	56	—	—	S 22	—	—
Restrictions on reporting of proceedings heard otherwise than in open court	57	—	—	S 23	—	—
Application to references under statutory powers	58	—	—	—	s 40	—

Arbitration Bill 2001		Derivations				
Section Heading	Clause	UNCITRAL Model Law	UK Arbitration Act	International Arbitration Act (Cap.143A)	Arbitration Act (Cap.10)	Others
Immunity of arbitral institutions	59	—	s 74	—	—	—
Service of notices	60	—	s76	—	—	—
Reckoning periods of time	61	—	s 78	—	—	—
Appointment of mediator	62	—	—	s 16	—	—
Power of arbitrator to act as mediator	63	—	—	s 17	—	—
Act to bind Government	64	—	—	—	—	—
Repeal of Arbitration Act and transitional provisions	65	—	—	—	—	—
Consequential amendments to Bankruptcy Act	66	—	—	—	—	s349A UK Insolvency Act 1986
Consequential amendments to Limitation Act	67	—	—	—	—	—

International Arbitration (Amendment) Bill

Bill No. 38/2001.

Read the first time on 25th September 2001.

A BILL

intituled

An Act to amend the International Arbitration Act (Chapter 143A of the 1995 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 2001 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 **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 deleting the definition of “arbitration agreement” in subsection (1) and substituting the following definitions:

10 ““appointing authority” means the authority designated under section 8 (2) or (3);

“arbitration agreement” means an agreement in writing referred to in Article 7 of the Model Law and includes an agreement deemed or constituted under subsection (3) or (4);”;

(b) by inserting, immediately after the word “award” in the definition of “award” in subsection (1), the words “but excludes any orders or directions made under section 12”; and

20 (c) by inserting, immediately after subsection (2), the following subsections:

25 “(3) 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.

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

Amendment of section 6

3. Section 6 of the principal Act is amended —

- (a) by deleting subsection (1) and substituting the following subsection:

5 “(1) Notwithstanding Article 8 of the Model Law, where any party to an arbitration agreement to which this Act applies institutes any proceedings in any court 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 pleading or taking any other step in the proceedings, apply to that court to stay the proceedings so far as the proceedings relate to that matter.”;

- 10 (b) by inserting, immediately after the word “proceedings” in the 4th line of subsection (2), the words “so far as the proceedings relate to the matter.”; and

- 15 (c) by deleting subsection (4) and substituting the following subsections:

20 “(4) Where no party to the proceedings has taken any further step in the proceedings for a period of not less than 2 years after an order staying the proceedings has been made, the court may, on its own motion, make an order discontinuing the proceedings without prejudice to the right of any of the parties to apply for the discontinued proceedings to be reinstated.

(5) For the purposes of this section and sections 7 and 11A —

25 (a) a reference to a party shall include a reference to any person claiming through or under such party;

(b) “court” means the High Court, District Court, Magistrate’s Court or any other court in which proceedings are instituted.”.

Amendment of section 7

30 **4.** Section 7 (1) of the principal Act is amended by deleting the word “Admiralty” in the 1st line and in the marginal note thereto.

Amendment of section 8

5. Section 8 of the principal Act is amended by deleting subsection (2) and substituting the following subsections:

“(2) The Chairman of the Singapore International Arbitration Centre shall be taken to have been specified as the authority competent to perform the functions under Article 11 (3) and (4) of the Model Law.

5 (3) 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 (2).”.

New section 8A

10 **6.** The principal Act is amended by inserting, immediately after section 8, the following section:

“Application of Limitation Act

15 **8A.—**(1) The Limitation Act (Cap. 163) shall apply to arbitration proceedings as it applies to proceedings before any court and a reference in that Act to the commencement of any action shall be construed as a reference to the commencement of arbitration proceedings.

20 (2) The High Court may order that in computing the time prescribed by the Limitation Act for the commencement of proceedings (including arbitration proceedings) in respect of a dispute which was the subject-matter of —

- (a) an award which the High Court orders to be set aside or declares to be of no effect; or
- 25 (b) the affected part of an award which the High Court orders to be set aside in part or declares to be in part of no effect,

the period between the commencement of the arbitration and the date of the order referred to in paragraph (a) or (b) shall be excluded.

30 (3) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, the cause of action shall, for the purpose of the Limitation Act, be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.”.

New section 9A

7. The principal Act is amended by inserting, immediately after section 9, the following section:

“Default appointment of arbitrators

5 **9A.**—(1) Notwithstanding Article 11 (3) of the Model Law, in an arbitration with 3 arbitrators, each party shall appoint one arbitrator, and the parties shall by agreement appoint the third arbitrator.

10 (2) Where the parties fail to agree on the appointment of the third arbitrator within 30 days of the receipt of the first request by either party to do so, the appointment shall be made, upon the request of a party, by the appointing authority.”.

Amendment of section 11

15 **8.** Section 11 (1) of the principal Act is amended by deleting the words “the arbitration agreement is contrary to public policy” and substituting the words “it is contrary to public policy to do so”.

New section 11A

9. The principal Act is amended by inserting, immediately after section 11, the following section:

“Reference of interpleader issue to arbitration

20 **11A.** Where in proceedings before any court relief by way of interpleader is granted and any issue between the claimants is one in respect of which there is an arbitration agreement between them, the court granting the relief may direct the issue between the claimants to be determined in accordance with the agreement.”.

25 **Amendment of section 12**

10. Section 12 of the principal Act is amended —

(a) by inserting, immediately after the word “is” in subsection (1) (d), the words “or forms part of”;

30 (b) by inserting, immediately after paragraph (d) of subsection (1), the following paragraphs:

“(da) samples to be taken from, or any observation to be made of or experiment conducted upon, any property which is or forms part of the subject-matter of the dispute;

5 (db) the preservation and interim custody of any evidence for the purposes of the proceedings;” and

(c) by inserting, immediately after subsection (3), the following subsection:

10 “(3A) The power of the arbitral tribunal to order a claimant to provide security for costs as referred to in subsection (1) (a) shall not be exercised by reason only that the claimant is —

(a) an individual ordinarily resident outside Singapore; or

15 (b) a corporation or an association incorporated or formed under the law of a country outside Singapore, or whose central management and control is exercised outside Singapore.”.

Repeal and re-enactment of section 13

11. Section 13 of the principal Act is repealed and the following section substituted therefor:

20 **“Witnesses may be summoned by subpoena**

25 **13.**—(1) Any party to an arbitration agreement may take out a writ of subpoena ad testificandum (writ to compel witness to attend and give evidence) or a writ of subpoena duces tecum (writ to compel witness to attend and give evidence and produce specified documents).

(2) The court may order that a writ of subpoena ad testificandum or a writ of subpoena duces tecum shall be issued to compel the attendance before an arbitral tribunal of a witness wherever he may be within Singapore.

30 (3) The court may also issue an order under section 38 of the Prisons Act (Cap.247) to bring up a prisoner for examination before an arbitral tribunal.

(4) 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.”.

Repeal and re-enactment of section 15

5 **12.** Section 15 of the principal Act is repealed and the following section substituted therefor:

“Law of arbitration other than Model Law

10 **15.—**(1) If the parties to an arbitration agreement (whether made before or after the date of commencement of the International Arbitration (Amendment) Act 2001) have expressly agreed either —

- (a) that the Model Law or this Part shall not apply to the arbitration; or
- (b) that the Arbitration Act 2001 or the repealed Arbitration Act (Cap.10) shall apply to the arbitration,

15 then, both the Model Law and this Part shall not apply to that arbitration but the Arbitration Act 2001 or the repealed Arbitration Act (if applicable) shall apply to that arbitration.

20 (2) For the avoidance of doubt, a provision in an arbitration agreement referring to or adopting any rules of an arbitral institution shall not of itself be sufficient to exclude the application of the Model Law or this Part to the arbitration concerned.”.

Amendment of section 16

13. Section 16 of the principal Act is amended by inserting, immediately after subsection (4), the following subsection:

25 “(5) For the purposes of this section and section 17 —

- (a) any reference to “conciliator” shall include a reference to any person who acts as a mediator;
- (b) any reference to “conciliation proceedings” shall include a reference to mediation proceedings.”.

New sections 19A and 19B

14. The principal Act is amended by inserting, immediately after section 19, the following sections:

“Awards made on different issues

5 **19A.**—(1) Unless otherwise agreed by the parties, the arbitral tribunal may make more than one award at different points in time during the arbitration proceedings on different aspects of the matters to be determined.

10 (2) The arbitral tribunal may, in particular, make an award relating to —

 (a) an issue affecting the whole claim; or

 (b) a part only of the claim, counter-claim or cross-claim, which is submitted to it for decision.

15 (3) If the arbitral tribunal makes an award under this section, it shall specify in its award, the issue, or claim or part of a claim, which is the subject-matter of the award.

Effect of award

20 **19B.**—(1) An award made by the arbitral tribunal pursuant to an arbitration agreement is final and binding on the parties and on any persons claiming through or under them and may be relied upon by any of the parties by way of defence, set-off or otherwise in any proceedings in any court of competent jurisdiction.

25 (2) Except as provided in Articles 33 and 34 (4) of the Model Law, upon an award being made, including an award made in accordance with section 19A, the arbitral tribunal shall not vary, amend, correct, review, add to or revoke the award.

 (3) For the purposes of subsection (2), an award is made when it has been signed and delivered in accordance with Article 31 of the Model Law.

30 (4) This section shall not affect the right of a person to challenge the award by any available arbitral process of appeal or review or in accordance with the provisions of this Act and the Model Law.”.

Amendment of section 21

15. Section 21 (2) of the principal Act is amended by deleting the word “where” in the 2nd line.

New section 25A

5 16. The principal Act is amended by inserting, immediately after section 25, the following section:

“Immunity of appointing authority and arbitral institutions, etc.

10 25A.—(1) The appointing authority, or an arbitral or other institution or person designated or requested by the parties to appoint or nominate an arbitrator, shall not be liable for anything done or omitted in the discharge or purported discharge of that function unless the act or omission is shown to have been in bad faith.

15 (2) The appointing authority, or an arbitral or other institution or person by whom an arbitrator is appointed or nominated, shall not be liable, by reason only of having appointed or nominated him, for anything done or omitted by the arbitrator, his employees or agents in the discharge or purported discharge of his functions as arbitrator.

20 (3) This section shall apply to an employee or agent of the appointing authority or of an arbitral or other institution or person as it applies to the appointing authority, institution or person himself.”.

Transitional provisions

17.—(1) Unless the parties have otherwise agreed in writing, this Act shall not apply to arbitration proceedings commenced before the date of commencement of the International Arbitration (Amendment) Act 2001.

25 (2) Notwithstanding subsection (1), where the arbitration proceedings were commenced before the date of commencement of the International Arbitration (Amendment) Act 2001, the law governing the arbitration agreement and the arbitration shall be the law which would have applied if this Act had not been enacted.

30 (3) For the purposes of this section, arbitration 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 arbitration proceedings, then on that date.

EXPLANATORY STATEMENT

This Bill seeks to amend the International Arbitration Act (Cap. 143A) to make certain provisions consistent with the provision of the new Arbitration Act 2001. The amendments provide for —

- (a) a definition of “arbitration agreement”, that is consistent with the definition under the new Arbitration Act 2001 (clause 2);
- (b) the court to make an order of discontinuance in respect of certain stayed actions after at least 2 years since the last step in legal proceedings was taken, but subject to certain safeguards (clause 3);
- (c) the Chief Justice to appoint any other person to exercise the powers of the Chairman of the Singapore International Arbitration Centre (clause 5);
- (d) the application of the Limitation Act (Cap. 163) (clause 6);
- (e) the High Court, District Court or Magistrate’s Court to refer issues that arise by way of interpleader to arbitration (clause 9);
- (f) the conferment on an arbitral tribunal of the powers to take samples and to order the preservation and interim custody of any evidence (clause 10);
- (g) the summoning of witnesses by subpoenas (clause 11);
- (h) the circumstances in which the Model Law and Part II of the Act will not apply and the express stipulation that a reference to the adoption of any arbitral institutional rules shall not be sufficient to exclude the application of the Model Law or Part II of the Act (clause 12);
- (i) references to “conciliator” and “conciliation proceedings” to include references to “mediator” and “mediation proceedings”, respectively (clause 13);
- (j) the clarification that an arbitral tribunal may make more than one award at different points in time and on different issues, or on different parts of a claim, counter-claim or cross-claim (clause 14);
- (k) the clarification that except as provided in the Model Law, an award made in accordance with Article 31 of the Model Law shall not be revisited by an arbitral tribunal. Every award, including an award made at different points in time on different issues or different parts of a claim, counter-claim or cross-claim is final and may not be varied, amended, corrected, reviewed, added to or revoked except as allowed under the Model Law (clause 14); and

- (l) the limited immunity of the appointing authority and arbitral institutions (clause 16).

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.

**LIST OF REPRESENTATIVES FROM SELECTED AGENCIES FOR
CONSULTATION ON ARBITRATION BILL 2000**

1. **Singapore Mediation Centre**
Mr Phang Hsiao Chung
2. **MINDEF**
Mr Kevin Ng Choong Yeong
3. **Trade Development Board and Ministry of Trade and Industry**
Ms Angela Png
4. **Singapore International Arbitration Center**
Justice (ret) Warren Khoo
5. **Law Society**
Mr Goh Phai Cheng, Senior Counsel
6. **Nanyang Technological University**
Asst Prof Joyce Lee
7. **Singapore Institute of Arbitrators**
Mr Leslie Chew, Senior Counsel
8. **Singapore Institute of Architects**
Mr Johnny Tan
9. **National University of Singapore**
Assoc Prof Hsu Locknie
10. **Law Reform Committee, Singapore Academy of Law**
(Chairman – The Honourable Justice of Appeal L.P. Thean)