International Commercial Arbitration
Singapore As A UNCITRAL Model Law Jurisdiction

S Y N O P S I S

The purpose of this paper is to examine generally the arbitration issues arising in Singapore as a UNCITRAL Model Law jurisdiction and the law and practice of international commercial arbitration in Singapore. The paper will consider some of the arbitration cases before the Singapore courts that are of relevance to international commercial arbitration. This paper will *not* deal with the arbitration of domestic disputes.

The paper will look at the influence of the UNCITRAL Model Law on International Commercial Arbitration ("the Model Law") on Singapore's International Arbitration Act 1994 ("the IAA") and its recently enacted Arbitration Act 2001 ("the AA 2001"). In the process, the paper will comment generally how Singapore and other UNCITRAL Model Law jurisdictions have dealt with the main arbitration issues in international commercial arbitration.

Finally, the paper will review some of the arbitration issues not addressed in the Model Law and comment on how Singapore and other Model Law jurisdictions have responded to these issues.

THE MODEL LAW JURISDICTIONS

The Model Law has been adopted by 47 countries including Singapore in 1994. Some countries have adopted the Model Law as one regime applying to both domestic and international arbitration.

Where two regimes apply, the legislation may provide for a choice to "opt into" or a choice to "opt out of " the international Model Law regime. Disputes do arise as to whether the domestic arbitration law or the international arbitration law applies to an arbitration agreement. This happens when one party wants to benefit from the curial supervision of domestic arbitration whilst the other party wants to benefit from the maximum autonomy of international arbitration.

Australia has two arbitration regimes. Australia's International Arbitration Act 1974 is a Model Law jurisdiction. The English Arbitration Act 1996 adopts parts of the Model Law and is not considered a Model Law jurisdiction.

SINGAPORE'S ARBITRATION LAWS

The AA 2001, which became law on 1 March 2002, replaces entirely the previous Arbitration Act (Cap 10) ("the AA 1985"). The AA 1985 applied to domestic arbitration agreements. The IAA was enacted in 1994 to adopt (and adapt) the Model Law as the applicable law in Singapore on international commercial arbitration.

The AA 2001 incorporates substantially the provisions of the Model Law and also some provisions from the English Arbitration Act 1996. Consequential amendments, which became law on 1 November 2001, were made to the IAA to ensure that the IAA will be consistent with the AA 2001.These legislative changes to Singapore's arbitration regimes were made to support Singapore's ambition to be an international commercial arbitration centre.

The Review of Arbitration Acts Committee ("the RAAC") which drafted the AA 2001 took the view that there should be separate legislative regimes for domestic and for international arbitration. This was to allow the Singapore courts a greater degree of curial supervision over the development of Singapore's domestic arbitration laws. However the two arbitration regimes would be harmonised and kept consistent.

ISSUES NOT IN THE MODEL LAW

In summary, Singapore currently has two arbitration regimes that adopt almost all of the Model Law and parts of the English Arbitration Act 1996.

Singapore also makes modifications and additional provisions to deal with issues not in the Model Law. For example, the IAA was amended to allow the making of awards on different issues, to make one award at a time on different aspects of the dispute; and to make an award on an issue affecting the whole claim or a partial award on part of the claim. This amendment is not found in the Model Law and is adapted from s.47 of the English Arbitration Act 1996.

The Model Law did not deal with the consolidation of arbitral proceedings. Singapore's AA 2001 but not the IAA allows the consolidation of proceedings and concurrent hearings if parties agree.

In an application before the SIAC, the claimant's notice of arbitration named as respondents the party who had signed the contract which included the arbitration clause, and four other parties who did not sign the contract. The tribunal held that the arbitrator could decide on the issue of joinder of parties under art 16 of the Model Law. Australia's International Arbitration Act 1974 and New Zealand's Arbitration Act 1997 provided for the consolidation of arbitral proceedings.

Another issue is the liability of arbitrators. Singapore's IAA provides that an arbitrator shall not be liable for negligence and for any mistake in law, fact or procedure. His appointment may be challenged.

In *Turner (East Asia) Pte Ltd v Builders Federal (Hong Kong) Ltd & Anor [1988] SLR 532* the Singapore High Court allowed an application to remove the arbitrator on the ground he misconducted himself, under the old AA 1985. The Model Law did not deal with conciliation and mediation. The IAA provides for an arbitrator to act as a conciliator and for the conciliator to act as the arbitrator, in all cases with the agreement of the parties. The AA 2001 has equivalent provisions for the appointment of a mediator.

CONCLUSION

Is Singapore an attractive centre for international commercial arbitration? There are other established and emerging international arbitration centres competing with Singapore.

The strong points for Singapore are : it is a Model Law jurisdiction; it is a Convention state under the NYC; it took in some good provisions from the English Arbitration Act 1996; and parties to an arbitration can choose between the maximum party autonomy of the IAA and the availability of court supervision under the AA 2001.

This is not the full LLM Paper.
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