

Arbitration (Foreign Awards) Bill

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Bill No: 16/1986

Read the first time: 29th July 1986

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Explanatory Statement

Expenditure of Public Money

Arbitration (Foreign Awards) Bill

Bill No. 16/1986

Read the first time on 29th July 1986.

An Act to give effect to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

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 Arbitration (Foreign Awards) Act 1986 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 —

“agreement in writing” includes an agreement contained in an exchange of letters, telegrams or in a communication by teleprinter;

“arbitral award” has the same meaning as in the Convention;

“arbitration agreement” means an agreement in writing of the kind referred to in Article II (1) of the Convention;

“Convention” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted in 1958 by the United Nations Conference on International Commercial Arbitration at its twenty-fourth meeting, the English text of which is set out in the Schedule;

“Convention country” means a country (other than Singapore) that is a Contracting State within the meaning of the Convention;

“court” means the High Court in Singapore;

“foreign award” means an arbitral award made in pursuance of an arbitration agreement in the territory of a Convention country other than Singapore.

(2) In this Act, where the context so admits, “enforcement”, in relation to a foreign award, includes the recognition of the award as binding for any purpose, and “enforce” and “enforced” have corresponding meanings.

(3) For the purposes of this Act, a body corporate shall be taken to be habitually resident in a country if it is incorporated or has its principal place of business in that country.

Application

3.—(1) This Act shall apply to arbitration agreements made before the date of commencement of this Act as it applies to arbitration agreements made on or after that date.

(2) This Act shall not apply to foreign awards made before the date of commencement of this Act.

(3) This Act shall bind the Government.

Enforcement of non-domestic arbitration agreements

4.—(1) This section shall apply in relation to every arbitration agreement —

- (a) which provides, expressly or by implication, for arbitration in any State other than Singapore; or
- (b) to which there is, at the time the legal proceedings under subsection (2) are commenced, at least one party who is a national of, or habitually resident in, any State other than Singapore.

(2) Where —

- (a) any party to an arbitration agreement to which this section applies institutes any legal proceedings in any court in Singapore against any other party to the agreement; and
- (b) the proceedings involve the determination of a dispute between the parties in respect of any matter which is required, in pursuance of the agreement, to be referred to, and which is capable of settlement by, arbitration,

any party to the agreement may, at any time after appearance and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to stay the proceedings.

(3) Subject to subsection (4), the court to which an application has been made in accordance with subsection (2) shall make an order, upon such conditions or terms as it thinks fit, staying the proceedings or, as the case may be, so much of the proceedings as involves the determination of the dispute and which refers the parties to arbitration in respect of the dispute in accordance with the arbitration agreement.

(4) A court shall not make an order under subsection (3) if it is satisfied that the

arbitration agreement is null and void, inoperative or incapable of being performed under —

- (a) the law to which the parties have subjected the arbitration agreement;
- (b) failing any indication under paragraph (a), the law of the country where the award will be made; or
- (c) failing any indication under paragraphs (a) and (b), the applicable law by virtue of the conflict of laws rules of Singapore.

(5) Where a court makes an order under subsection (3), it may, for the purpose of preserving the rights of parties, make such interim or supplementary orders as it thinks fit in relation to any property which is the subject of the dispute to which the order under subsection (3) relates.

(6) For the purposes of subsections (2), (3) and (5), a reference to a party includes a reference to any person claiming through or under such party.

(7) Section 7 of the Arbitration Act (Cap. 16) shall not apply to an arbitration agreement to which this section applies.

Recognition and enforcement of Convention awards

5.—(1) Subject to this Act, a foreign award may be enforced in a court either by action or in the same manner as an award of an arbitrator made in Singapore is enforceable under section 20 of the Arbitration Act.

(2) Any foreign award which is enforceable under subsection (1) shall be recognised as binding for all purposes upon the persons between whom it was made and may accordingly be relied upon by any of those parties by way of defence, set-off or otherwise in any legal proceedings in Singapore.

Evidence

6.—(1) In any proceedings in which a person seeks to enforce a foreign award by virtue of this Act, he shall produce to the court —

- (a) the duly authenticated original award or a duly certified copy of it;
- (b) the original arbitration agreement under which the award purports to have been made, or a duly certified copy of it; and
- (c) where the award or agreement is in a foreign language, a translation of it in the English language, duly certified as a correct translation by a sworn translator or by an official or by a diplomatic or consular agent in English of the country in which the award was made.

(2) A document produced to a court in accordance with this section shall, upon mere production, be received by the court as prima facie evidence of the matters to which it relates.

Refusal of enforcement

7.—(1) In any proceedings in which the enforcement of a foreign award is sought by virtue of this Act, the party against whom the enforcement is sought may request that the enforcement be refused, and the enforcement in any of the cases mentioned in subsections (2) and (4) may be refused but not otherwise.

(2) A court so requested may refuse enforcement of a foreign award if the person against whom enforcement is sought proves to the satisfaction of the court that —

- (a) a party to the arbitration agreement in pursuance of which the award was made was, under the law applicable to him, under some incapacity at the time when the agreement was made;
- (b) the arbitration agreement is not valid under the law to which the parties have subjected it or, in the absence of any indication in that respect, under the law of the country where the award was made;
- (c) he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case in the arbitration proceedings;
- (d) subject to subsection (3), the award deals with a difference not contemplated by, or not falling within the terms of, the submission to arbitration or contains a decision on the matter beyond the scope of the submission to arbitration;
- (e) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- (f) the award has not yet become binding on the parties to the arbitral award or has been set aside or suspended by a competent authority of the country in which, or under the law of which, the award was made.

(3) When a foreign award referred to in subsection (2)(d) contains decisions on matters not submitted to arbitration but those decisions can be separated from decisions on matters submitted to arbitration, the award may be enforced to the extent that it contains decisions on matters so submitted.

(4) In any proceedings in which the enforcement of a foreign award is sought by