ALTERNATIVES TO LITIGATION

Posted on April 5, 2021

Category: Singapore Chapter of The Dispute Resolution Review

General disclaimer
This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

Authors and Contributors: See Tow Soo Ling, Subramanian Pillai, Venetia Tan, Ervin Roe and Lim Shu-Yi.

i. Arbitration

A common alternative to litigation is arbitration, because it is a private method of dispute resolution, thus allowing for procedural flexibility and confidentiality of proceedings. However, there has recently been concern that arbitration is getting increasingly expensive.

The SIAC is the main arbitration institution in Singapore and administers most cases under the SIAC Rules adopted by the parties in their arbitration agreement, or the UNCITRAL arbitration rules. The costs of the arbitration operate on an *ad valorem* system, where it is calculated based on the value of the claim.

Depending on whether an arbitration is international or domestic, the International Arbitration Act or the Arbitration Act will apply. Domestic arbitrations refer to arbitrations between local parties that do not have any international elements. One of the main distinctions between the two regimes lies in the degree of court intervention in the arbitral process. The general rule is that there can be no appeal against an award issued in an international arbitration. The only recourse is an application to set aside the arbitral award. On the other hand, where domestic arbitrations are concerned, a party may appeal an award on a question of law arising out of the award by agreement of the parties or leave of court. An application to appeal an arbitral award must be brought within 28 days of the date of the award. On appeal, the court may confirm, vary or remit the award to the tribunal in whole or in part, for reconsideration in light of the court's determination, or set aside the award in whole or in part. Notwithstanding that, parties may agree to exclude their rights to appeal.

The arbitral award may, by leave of the High Court or a judge thereof, be enforced in the same manner as a judgment or order to the same effect and, where leave is so given, a judgment may be entered in terms of the award. Being a contracting state to the New York Convention allows for ease of enforcement of arbitral awards internationally. Foreign arbitral awards are recognised in the same way as domestic awards, as long as the award was made in a country that is also a party to the New York Convention.

Singapore welcomed third-party funding for international arbitration in Singapore in early 2017 and it appears to be an area for growth and expansion in the next few years. The primary sources of legislation and regulations include the Civil Law Act and the Civil Law (Third-Party Funding) Regulations 2017. Riding on the trend of third-party funding, the Singapore Ministry of Law is taking steps to extend third-party funding to domestic arbitration, certain proceedings in the Singapore International Commercial Court and mediations connected with these proceedings.

When negotiating a third-party funding contract, the funder should take reasonable steps to ensure that it has met the requirements as a qualifying third-party funder as set out in the Regulations, advised the party interested in funding to obtain independent legal advice on the terms of the contract and satisfied itself that there are no circumstances arising from the funding that might give rise to any foreseeable conflict of interest.

Between 26 June 2019 and 21 August 2019, the Singapore Ministry of Law conducted a public consultation to seek feedback on the proposed amendments to the International Arbitration Act (IAA). The proposals involve amendments to the following:

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

1. introducing a default mode of appointment of arbitrators in multi-party situations;
2. recognition that an arbitral tribunal and the High Court have powers to enforce obligations of confidentiality in an arbitration;
3. allowing parties to, by agreement, request the arbitrator to decide on jurisdiction at the preliminary stage;
4. allowing parties to appeal to the High Court on a question of law arising out of an award made in the proceedings provided parties have agreed to opt in to this mechanism;
5. allowing parties to agree to waive or limit the annulment grounds under the Model Law and the IAA; and
6. providing that the Court shall have power to order costs in certain arbitral proceedings.

We expect amendments with respect to the first two proposals following the First Reading of the International Arbitration (Amendment) Bill on 1 September 2020. The Ministry of Law is still studying the remaining proposals.
On 5 October 2020, the Ministry of Law had announced that it will be introducing the Insolvency Restructuring and Dissolution (Amendment) Bill to provide a simplified insolvency programme to assist micro and small companies that require support to restructure their debts in light of the covid-19 pandemic.

ii. Mediation
Mediation is an integral part of the legal system in Singapore. The use of mediation is fast gaining traction at a time when parties are increasingly looking beyond the traditional adversarial (and expensive) court-based model to resolve their disputes.
The courts encourage parties to consider ADR, including mediation, at the earliest possible stage. Mediation services are provided for free at the state courts for claims filed with the magistrates' courts, pursuant to the State Courts Practice Directions.
The Singapore Mediation Centre, which was set up in 2014, provides commercial mediation services and deals with most types of disputes, including cross-border commercial disputes.
The recent push for mediation as a dispute resolution mechanism of choice is evident from the introduction of the Mediation Act 2017. The Mediation Act seeks to promote, encourage and facilitate the resolution of disputes by mediation. Prior to the Mediation Act, a party seeking to enforce a mediated settlement agreement had to do so by instituting court proceedings, incurring costs and losing time in the process. Under the Singapore Mediation Act, mediated settlement agreements entered into in Singapore can be recorded and enforced as an order of court.
Singapore achieved another milestone in its journey to become the leading dispute resolution hub in Asia when it hosted, and signed, the Singapore Convention on Mediation (Singapore Convention) on 7 August 2019. The Singapore Convention, also known as the United Nations Convention on International Settlement Agreements Resulting from Mediation, establishes a harmonised legal framework for international mediated settlement agreements. Under the Singapore Convention, parties may enforce and invoke international settlement agreements resulting from mediation across borders in another

General disclaimer
This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

contracting state. To date, the Singapore Convention has been signed by 53 states (as at 2 September 2020), including the US, China, India and South Korea. The Singapore Convention entered into force on 12 September 2020 and has been ratified by six countries, including Singapore, Qatar and Saudi Arabia.
The State Courts Centre for Dispute Resolution has offered mediation by court-appointed mediators through online videoconferencing since February 2018. From 27 March 2020, as part of safe distancing methods to curb local transmission of covid-19, mediation by virtual conferencing became the default option.
Regarding correspondence confidentiality in mediation, the Singapore High Court has stated, in *Jumaiah bte Amir v. Salim bin Abdul Rashid*:
Correspondence between parties in mediation is confidential and made without prejudice. To retain that confidentiality and to encourage such mediations, the court should therefore not delve into correspondence exchanged in the mediation process unless it is necessary, for example, to determine whether an agreement has been reached or if parties had agreed to disclose such communications.

iii. Other forms of dispute resolution
Neutral evaluation and neutral determination are private processes where parties can refer their dispute to a 'neutral', who will provide a summary evaluation of the dispute or a temporary determination for the matter. The neutral will be a neutral third party appointed by the President of the Law Society of Singapore from the panel of neutrals, which consists of experienced lawyers. The benefits of neutral evaluation and neutral determination are that they are speedier and more cost-efficient than litigation or arbitration. In addition, the result is not permanent, thus parties can subsequently assert their rights through formal dispute resolution methods. An evaluation is the opinion of the neutral and is not binding on parties except for a costs decision, while a determination will be binding on parties until the dispute if finally determined by an arbitrator, or a court or other body of competent jurisdiction.

Table of Content

General disclaimer
This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.