Arbitration practitioners and followers of arbitration developments in Singapore will no doubt be aware that the International Arbitration (Amendment) Bill 2012 ("IA(A) Bill") has just been introduced for passage through the Singaporean legislative process on 8 March, 2012. The IA(A) Bill is expected to pass into law later this year, and is a refinement of an earlier draft bill that was circulated by the Ministry of Law last year for public feedback. The Bill reflects the ambition of the Singapore law-makers to keep Singapore's arbitration legislation at the forefront of international arbitral developments. In particular, its provisions on the emergency arbitrator procedure reveal innovation and foresight by the law-drafters in Singapore in addressing what clearly is a growing trend and practical need in international arbitration.

**IAA 2012 Amendments - in Brief**

The Bill primarily amends the International Arbitration Act (IAA) in four areas:

i. Relaxation of the writing requirement in the IAA for arbitration agreements, by extending the IAA's application to arbitration agreements concluded by any means (including orally or by conduct or by other means), but whose contents are subsequently recorded in writing;

ii. Granting Singapore courts the express power to review, at any stage of arbitral proceedings, not only 'positive', but 'negative' jurisdictional rulings by arbitral tribunals (i.e. that the tribunal does not have jurisdiction), and to make costs orders in this regard against a party;

iii. Expressly empowering arbitral tribunals to award interest, whether simple or compound; on monetary claims and costs orders; and

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iv. Providing legislative support for the 'emergency arbitrator' procedure by according emergency arbitrators appointed under any arbitration rules the same legal status and powers as that of a conventionally-constituted arbitral tribunal, including the recognition and enforcement of such orders by the Singapore courts, whether made in Singapore or abroad.

Some Preliminary Observations

The IIA amendments relating to the writing requirement for arbitration agreements and the awarding of interest by arbitral tribunals are broadly consistent with international arbitral standards and practice, or otherwise in line with commercial realities. Both amendments are therefore relatively uncontroversial, and were generally well-received during the consultation process.

The same perhaps cannot be said of the other two amendments in the Bill concerning judicial review of negative jurisdictional rulings and the legal status of the emergency arbitrator, on which certain reservations were raised by some practitioners. The relative merits of such reservations, whether doctrinal or practical, are beyond the scope of this piece. What can be said, though, is that these two amendments reveal the pragmatic mindset of the Singapore lawmakers in adapting and even innovating legal mechanisms to meet the demands and needs of the arbitral process, and may even herald the beginnings of a "Singapore way" in the development of Singapore's arbitration regime, albeit one that continues to hew closely to the Model Law.

The amendment to permit judicial review of negative jurisdictional rulings departs from the current position under the UNCITRAL Model Law - UNCITRAL had decided, in its deliberations on the 2006 amendments to the Model Law, to exclude the right to judicial review of negative jurisdictional rulings. At first glance, the decision to depart from the Model Law may appear somewhat puzzling for a jurisdiction that up to now has been a faithful adherent to the Model Law. Indeed, the IAA adopts almost all of the Model Law without modification. Yet, as the report issued by the Singapore Academy of Law's Law Reform Committee had pertinently observed, on this issue there is no definitive international consensus. Issues of kompetenz-kompetenz, and the timing and ability of national courts to review jurisdictional decisions, are notoriously jurisdiction-specific. Whatever may be the implications of this amendment, it reflects the considered view of the drafters that this is a gap in Singapore's arbitration laws that needs to be plugged. When the IA(A) Bill is enacted, Singapore will join other arbitration hubs such as England, France and Switzerland, where the courts have the power to review, and in appropriate cases, overturn negative jurisdictional rulings by arbitral tribunals.

Of the four amendments in the IA(A) Bill, it is the legislative recognition and support of the emergency arbitrator procedure that are perhaps most note-worthy, and demonstrate Singapore's growing sophistication as an arbitral jurisdiction. Interim relief in international arbitration, including in the period
before the tribunal is constituted, has become a significant issue in recent years, as evident from the 2006 modifications to the UNCITRAL Model Law. Access to pre-arbitral emergency relief is increasingly part of the international arbitration landscape, in addition to recourse to state courts and conventionally constituted tribunals for interim relief. At least five arbitral institutions now have "emergency arbitrator" provisions in their rules -- the International Centre for Dispute Resolution (ICDR)'s International Rules, Stockholm Chamber of Commerce (SCC), Singapore International Arbitration Centre (SIAC), the Netherlands Arbitration Institute (NAI), and the recently-released International Chamber of Commerce (ICC)'s arbitration rules.

Yet, few if any notable jurisdictions have to date expressly legislated to provide legal recognition and support to the status and orders of emergency arbitrators. Likewise, the UNCITRAL Model Law currently does not expressly address the emergency arbitrator procedure. One reason may be due to the admittedly thorny questions surrounding the concept and status of an emergency arbitrator in the arbitration firmament, for which international consensus has yet to crystallise.

Such a perspective may, however, be missing the significance of the emergency arbitrator provisions in the IA(A) Bill. Under the IA(A) Bill, an order issued by an emergency arbitrator under any arbitral rules, whether in Singapore or abroad, will ordinarily be enforceable in Singapore. The decision by the drafters of the Bill to clarify that the orders of emergency arbitrators outside Singapore will similarly be enforceable in Singapore, which was somewhat unclear from a literal reading of the earlier draft bill, can perhaps be said to reflect the 'pro-arbitration' ethos inherent in recent IAA amendments, most notably the 2010 enactment of Section 12A of the IAA empowering the Singapore courts to provide interim relief in aid of foreign arbitrations. That the Singapore courts are empowered, in appropriate circumstances, to extend judicial assistance to the international arbitral process accords with the well-established principles of international comity and transnational judicial cooperation, and bodes well for Singapore's continued development as a cosmopolitan arbitration jurisdiction.

Conclusion

It is no secret that the authorities in Singapore aim to be consciously responsive to developments and needs in the international arbitral process. The IA(A) Bill, in particular with its provisions on judicial review of negative jurisdictional rulings and the emergency arbitrator procedure, represents a further evolution of its arbitration regime, that in turn will serve to maintain Singapore's position as a leading arbitral jurisdiction.