

INTERNATIONAL ARBITRATION – THE FIJI PERSPECTIVE

Fiji ratified the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958 (the “New York Convention”) on 27 September 2010. On 15 September 2017, Fiji enacted the INTERNATIONAL ARBITRATION ACT No.44 of 2017(hereinafter referred to as “The Act”). Prior to the enactment of this Act, the Arbitration Act was enacted in 1965, which remains in operation to deal with domestic arbitrations (vide s.57 of the Act).

Section 4 of the Act specifies the scope of application of the Act and would apply to international arbitrations only commenced on or after the commencement of this Act under an arbitration agreement whenever made.

This Act is a comprehensive state-of-the-art legislative framework for international arbitration based on the UNCITRAL Model on International Commercial Arbitration 1985, with amendments adopted in 2006. It also incorporates international best practices in international commercial arbitration, including provisions adapted from the Australian International Arbitration Act, the Hong Kong Arbitration Ordinance and the Singapore International Arbitration Act.

The Act aims at promoting greater foreign direct investment in Fiji. It strengthens the existing legislative framework governing international arbitration in Fiji by implementing the core commitments of Fiji under the New York Convention to deal with international arbitrations and to enforce arbitral awards.

The Act creates a more favourable and standardized legal environment for the conduct of international arbitration by incorporating the 2006 amendments to the Model Law.

Salient features in the Act:

The definition and form of the arbitration agreement is dealt with in detail in section 11 of the Act and is based on Article 76 of the Model Law, Option 1.

Section 12 imposes an obligation on Fijian Courts to refer parties to arbitration if the court is seized of a matter which is the subject of the arbitration agreement,

unless it finds that the agreement is null and void, inoperative or incapable of being performed. This is based on Article 8(1) of the Model Law.

Section 14 provides for the granting and enforcement of interim measures, which is based on Articles 17 and 17A-J of the Model Law.

Section 22 of the Act empowers the arbitral tribunal to rule on its own jurisdiction and provides that an arbitration clause that forms part of a contract is separable from the other terms of that contract. This is based on Article 16 of the Model Law.

Sections 22 to 23 provides for granting and enforcement of interim measures. These are based on Articles 17 and 17A-J of the Model Law.

Adaptation of Best Practices

The Act also adapts international best practices as seen in the following provisions:

Section 2 while defining an “Arbitral Tribunal” provides for the appointment of an “Emergency Arbitrator”. (This section is modelled on S.2(1) of the Singapore International Arbitration Act).

Section 21 provides for liability and immunity of arbitrators, appointing authorities and arbitral institutions. (This section is modelled S.28(1) of the Australian International Arbitration Act and S.25A of the Singapore International Arbitration Act).

Section 35 provides for representation in arbitral proceedings by permitting a party to appear in person or any other person of that party’s choice. (This section is modelled on S.29 of the Australian Arbitration Act).

Section 45 provides for the confidentiality of the arbitration proceedings and awards in the arbitration. (This Section is modelled on S.18 of the Hong Kong Arbitration Ordinance).

Section 55 provides for the effect of public policy in relation to interim measure or awards, where such interim measures or awards are in conflict with or contrary to the public policy of Fiji, such interim measure or award may be refused enforcement. (This Section is modeled on Ss.8(7A) and 19 of the Australia International Arbitration Act).

The Act came into force on 4th December 2018 and Rules have been framed and published as High Court (Amendment) Rules 2018.

The Act has been commented upon as one of the most advanced and up-to-date legislative regimes for international arbitration in the region, if not internationally. The Act enhances Fiji's reputation as a place for international arbitration and business, and can serve as a template for promotion of international arbitration in the Pacific Region.

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