A modern legal framework to enable global trade: the new legislation on arbitration and on electronic transactions

Singapore's new legislation on arbitration and electronic transactions

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SINGAPORE
• Independent sovereign developing nation
• Parliamentary democracy
  – Small: 712.4 sq Km
  – Population: 5,312,400 (2012)
• Gained independence on 9 August, 1965
• Rapid economic growth
  • GDP: $326,832,4 million (2011)
• Commercial hub of South-East Asia
• Open economy
  – heavily dependent on world trade
• Need to constantly upgrade infrastructure.
• Needed service for commercial relations
• Possible growth area for national economy
• 2 separate regimes:
  – International Arbitration Act (Chapter 143 A)
    • Applies to international arbitrations or when parties agree to arbitrate under its provisions
    • Aligned with UNCITRAL Model Law on International Commercial Arbitration
  – Arbitration Act (Chapter 10)
    • Applies to domestic arbitration
• Suggestions made to consolidate both Acts.
Actively promoted by Government and legal community

Maxwell Chambers – purpose-built arbitration facility

Attractive tax incentives for arbitration in Singapore

“Arbitration-friendly” judiciary
  – Particularly for international commercial arbitrations.
ELECTRONIC COMMERCE

• Important vehicle for economic growth
  – facilitates global commercial relations without need of a hinterland

• Need to build technical and legal infrastructure

• Internationally harmonized laws crucial in e-commerce across borders.
LEGAL INFRASTRUCTURE FOR ELECTRONIC COMMERCE

• 1996 – UNCITRAL Model Law on Electronic Commerce (MLEC)
• 2001- UNCITRAL Model Law on Electronic Signatures (MLES)
• 1998: Electronic Transactions Act enacted
  – Singapore is first state to implement the UNCITRAL Model Law on Electronic Commerce
    • Provides for “functional equivalence” with paper based transactions
    • Provides code for e-commerce transactions
  – Removes uncertainty over enforceability of transactions entered into electronically.
DEVELOPMENTS SINCE 2001

• Inconsistent application of the MLEC
  – e.g. EU Directive 2000/31/EC ("Directive on Electronic Commerce")
• Rapid development in technology and practice
  – Especially growth of Internet
• MLEC provisions increasingly impractical
• 2001 – UNCITRAL commences work on treaty on electronic contracting
  – UN Convention on the Use of Electronic Communications in International Trade
    • ("The UN Electronic Communications Convention")
The Electronic Communications Convention

- Updates MLEC in light of technological changes
- Completed and adopted by UNCITRAL in July 2005
- Adopted by UN General Assembly in November 2005
- Singapore was original signatory and first state to ratify
KEY PROVISIONS

• Application and party autonomy
• Electronic originals
  – Concept of “data messages”
  – Criteria for recognition as a signature
• Time and place of dispatch
• Website sales
• Automated transactions
• Errors.
ELECTRONIC TRANSACTIONS ACT (ETA)

• Enacted in 1998 to implement the MLEC
• 2010 –repealed and re-enacted to align with the UN Electronic Communications Convention
  – Wide public consultation
  – Deliberate policy to avoid different regimes for paper-based and electronic contracts
• Excluded transactions
  – Listed: wills, negotiable instruments etc
  – parties can agree to exclude
• New criteria for electronic signatures
  – Need for “reliable” method
• Digital signatures –
  – Authentication by certification authority
  – Identity and intention for digital signatures on electronic records presumed.
CONCLUSION

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