Commercial Arbitration

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Singapore

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Infrastructure

1.

The New York Convention

Is your state a party to the New York Convention? Are there any noteworthy declarations or reservations?

Singapore acceded to the New York Convention on 21 August 1986, with no reservations or declarations except that the application of the treaty is upon the basis of reciprocity with other contracting dtates.

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2.

Other treaties

Is your state a party to any other bilateral or multilateral treaties regarding the recognition and enforcement of arbitral awards?

Singapore enacted the Arbitration (International Investment Disputes) Act in 1968 in order to implement the International Convention on the Settlement of Investment Disputes between States and Nationals of other States.

The Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, Rev Ed 1985) provides for the reciprocal enforcement of judgments (including an award in proceedings on an arbitration where the award has become enforceable in the same manner as a judgment) of certain former Commonwealth countries.

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3.

National law

Is there an arbitration act or equivalent and, if so, is it based on the UNCITRAL Model Law? Does it apply to all arbitral proceedings with their seat in your jurisdiction?

In relation to commercial arbitration, the relevant arbitration acts are the International Arbitration Act (Cap. 143A) (IAA) and the Arbitration Act (Cap. 10) (AA). The UNCITRAL Model Law (with the exception of Chapter VIII) (the Model Law) has been adopted by virtue of section 3 of the IAA, and it applies to all international arbitrations as defined in section 5. For non-international arbitrations seated in Singapore, the IAA and Model Law only apply if the parties agree so in writing; otherwise, the AA applies.

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4.

Arbitration bodies in your jurisdiction

What arbitration bodies relevant to international arbitration are based within your jurisdiction? Do such bodies also act as appointing authorities?

The key arbitration body is the Singapore International Arbitration Centre (SIAC). The President of the Court of Arbitration of the SIAC also acts as the appointing authority pursuant to article 6 of the Model Law, and section 8 of the IAA and section 13 of the AA. The SIAC revised its rules in 2016 (the 2016 SIAC Rules) and has separately published a set of investment arbitration rules in 2017, being the first commercial arbitral institution to do so. Other important bodies include the Singapore Chamber of Maritime Arbitration (SCMA), the WIPO Arbitration and Mediation Center, International Centre for Dispute Resolution (ICDR) (Singapore Office) and the International Chamber of Commerce (ICC), which has recently announced that it will be setting up a case management office in Singapore.

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6.

Courts

Is there a specialist arbitration court? Is the judiciary in your jurisdiction generally familiar with the law and practice of international arbitration?

While there is no arbitration court per se, the Singapore International Commercial Court (SICC) established in 2015 as a division of the Singapore High Court is designed to deal with transnational commercial disputes. The judiciary in Singapore is familiar with and supportive of international arbitration.

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Agreement to arbitrate

7.

Formalities

What, if any, requirements must be met if an arbitration agreement is to be valid and enforceable under the law of your jurisdiction? Can an arbitration agreement cover future disputes?

A valid and enforceable arbitration agreement in Singapore has to be in writing pursuant to section 2A of the IAA and section 4 of the AA. The written requirement will be satisfied if the agreement is recorded in writing, including where the agreement was concluded orally, by conduct or by other means. An arbitration agreement is in writing if recorded in an electronic communication. It may also be in the form of an arbitration clause in a contract or a separate agreement, and may be incorporated into a contract by reference.

An arbitration agreement can cover future disputes.

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8.

Arbitrability

Are any types of dispute non-arbitrable? If so, which?

Section 11 of the IAA provides that any dispute may submitted to arbitration unless it is contrary to Singapore public policy to do so. There is no corresponding provision in the AA, although section 48(1)(b)(i) references the non-arbitrability of a dispute as a ground for setting aside an arbitral award.

A matter is presumed to be arbitrable (where the arbitration agreement is wide enough to cover the dispute) unless there is clear intention from Parliament to the contrary. Issues that may have public interest elements may not be arbitrable, such as matrimonial affairs, grants of statutory licenses, registration matters for intellectual property, winding-up of companies, bankruptcies of debtors and administration of estates.

Disputes involving an insolvent company that stem from its pre-insolvency rights and obligations are arbitrable unless the agreement affects the substantive rights of other creditors, whereas those that arise only upon the onset of insolvency due to the operation of the insolvency regime are non-arbitrable, even when included expressly in an arbitration agreement, due to the need to give proper effect to the insolvency regime and the wider public interest at stake such as the protection of creditors. Disputes over minority oppression or unfairly prejudicial conduct have been held to be arbitrable. A dispute will not be found to be non-arbitrable simply because the relief sought might be beyond the powers of the tribunal to grant.

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9.

Third parties

Can a third party be bound by an arbitration clause and, if so, in what circumstances? Can third parties participate in the arbitration process through joinder or a third-party notice?

A third party may only be bound by an arbitration clause by consent, or where the provisions of the Contracts (Rights of Third Parties) Act (Cap 53B) apply.

Third parties may participate in the arbitration process with the consent of all the parties involved, including the additional party to be joined. Some institutional rules also make provision for joinder of parties to arbitration proceedings (for example, Rule 7 of the 2016 SIAC Rules), although such rules do not establish a jurisdictional basis for joinder of non-parties.

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Consolidation

Would an arbitral tribunal with its seat in your jurisdiction be able to consolidate separate arbitral proceedings under one or more contracts and, if so, in what circumstances?

Yes, consolidation may occur where all parties agree. In addition, some institutional rules of arbitration, such as Rule 8 of the 2016 SIAC Rules, provide for consolidation. Under that rule, for example, a party may apply for consolidation if (i) all the parties agree; (ii) claims are made under the same arbitration agreement; or (iii) the arbitration agreements are compatible and the disputes are related. The SIAC Court of Arbitration will determine such an application without prejudice to the arbitral tribunal’s ability subsequently to determine its jurisdiction.

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11.

Groups of companies

Is the "group of companies doctrine" recognised in your jurisdiction?

Singapore law does not recognise the group of companies doctrine. In Manuchar Steel Hong Kong Limited v Star Pacific Line Pte Ltd [2014] SGHC 181, the Singapore High Court applied the English High Court decision in Peterson Farms Inc v C&M Farming Ltd [2004] 1 Lloyd’s Rep 603 in which it was held that an arbitral award cannot impose enforceable obligations on third parties to an arbitration agreement, and to do so through the group of companies / single economic entity concept would be anathema to the “internal logic of the consensual basis of an agreement to arbitrate”.

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12.

Separability

Are arbitration clauses considered separable from the main contract?

Yes. An arbitration clause will not be deemed non-existent or invalid by virtue of the invalidity of the main contract pursuant to article 16 of the Model Law, which forms part of Singapore law pursuant to the IAA. For domestic arbitrations, section 21 of the AA also provides for the separability of arbitration clauses from the main contract.

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13.

Competence-competence

Is the principle of competence-competence recognised in your jurisdiction? Can a party to an arbitration ask the courts to determine an issue relating to the tribunal’s jurisdiction and competence?

An arbitral tribunal has the power to rule on its own jurisdiction in accordance with the principle of competence-competence pursuant to article 16 of the Model Law. Where the tribunal makes a decision as a preliminary matter as to its jurisdiction (either finding that it does have jurisdiction or that it does not), or when it determines at any stage that it does not have jurisdiction, that decision may be appealed to the Singapore High Court pursuant to section 10 of the IAA and sections 21 and 21A of the AA.

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14.

Drafting

Are there particular issues to note when drafting an arbitration clause where your jurisdiction will be the seat of arbitration or the place where enforcement of an award will be sought?

There are no particular issues of note when drafting an arbitration clause that is enforceable in Singapore. The Singapore courts adopt a pro-arbitration stance and will strive to give effect to an arbitration agreement so long as the parties’ intent to arbitrate is clear. For an example of an enforceable arbitration clause, see the model arbitration clause recommended by the Singapore International Arbitration Centre (SIAC) with respect to its rules:

“Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre (SIAC) in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (SIAC Rules) for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The seat of the arbitration shall be [City, Country].

The Tribunal shall consist of [1 / 3] arbitrator(s).

The language of the arbitration shall be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.”

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15.

Institutional arbitration

Is institutional international arbitration more or less common than ad hoc international arbitration? Are the UNCITRAL Rules commonly used in ad hoc international arbitrations in your jurisdiction?

Institutional international arbitration is more common than ad hoc arbitration, although ad hoc arbitration remains popular in certain industries such as maritime and international trade. The SIAC has experienced steady growth of cases in the past ten years, with an active caseload of about 650 cases as of 31 March 2017. The UNCITRAL Rules are commonly used in ad hoc international arbitrations.

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Multi-party agreements

What, if any, are the particular points to note when drafting a multi-party arbitration agreement with your jurisdiction in mind? In relation to, for example, the appointment of arbitrators.

There are no particular issues of note when it comes to a multi-party arbitration agreement in Singapore though parties may wish to consider arbitrating pursuant to institutional rules of arbitration which make provision for the appointment of the tribunal in multi-party arbitrations. For example, Rule 12 of the 2016 SIAC Rules provides, broadly speaking, that where the parties cannot agree on the constitution of the tribunal, the President of the Court of Arbitration of the SIAC will appoint the members of the tribunal.

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Commencing the arbitration

17.

Request for arbitration

How are arbitral proceedings commenced in your jurisdiction? Are there any key provisions under the arbitration laws of your jurisdiction relating to limitation periods of which the parties should be aware?

Arbitral proceedings are commenced (save where the parties agree otherwise) in accordance with article 21 of the Model Law, namely when the request for the dispute to be referred to arbitration is received by the respondent. Some institutional rules make different provision for the commencement of arbitration. For example, Rule 3.3 of the 2016 SIAC Arbitration Rules provides that the date of commencement of the arbitration is deemed to be the date of receipt of the complete Notice of Arbitration by the Registrar.

The date of commencement of arbitration may be important for limitation purposes. In Singapore, the Limitation Act (Cap 163) and the Foreign Limitation Periods Act 2012 apply to both international and non-international arbitrations under section 8A of the IAA and section 11 of the AA. In brief, any contractual or tortious claims must be brought within six years of the date of accrual of the cause of action.

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Choice of law

18.

Choice of law

How is the substantive law of the dispute determined? Where the substantive law is unclear, how will a tribunal determine what it should be?

Under article 28 of the Model Law, the applicable law to the substance of a dispute will be that chosen by the parties. A reference to the substantive law of a state will not be taken to mean its conflict of laws rules. Parties may choose the applicable law to the substance of the dispute either expressly or impliedly. While there are obviously fewer difficulties with ascertaining parties’ express choice of law in Singapore, the determination of the parties’ implied choice of law has been examined more recently in Singapore in the context of the law of the arbitration agreement. The Singapore High Court has held in BCY v BCZ [2016] SGHC 249 that where parties have not expressly chosen the law applicable to their arbitration agreement, there is a presumption that the implied choice is likely to be the same as the expressly chosen law of the substantive contract. It was held that this presumption is ‘supported by the weight of authority and is, in any event, preferable as a matter of principle’.

Where the parties have not made a choice of law, the tribunal will determine it by applying the conflict of laws rules it considers applicable, as provided for by article 28(2) of the Model Law. In all cases, pursuant to article 28(4) of the Model Law, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

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Appointing the tribunal

19.

Choice of arbitrators

Does the law of your jurisdiction place any limitations in respect of a party’s choice of arbitrator?

There are no restrictions in Singapore on a party’s choice of arbitrator. However, an arbitrator lacking in independence and/or impartiality may be challenged under article 12 of the Model Law and section 14 of the AA, and also most major institutional rules, for example Rule 14 of the 2016 SIAC Rules. In addition, the SIAC has a Code of Ethics for an arbitrator that provides for an SIAC arbitrator’s obligations in relation to appointment, disclosure, bias, communications, fees, conduct and confidentiality.

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20.

Foreign arbitrators

Can non-nationals act as arbitrators where the seat is in your jurisdiction or hearings are held there? Is this subject to any immigration or other requirements?

There are no restrictions on non-nationals acting as arbitrators where Singapore is chosen as the seat of arbitration or the location for hearings. Non-residents can, subject to certain narrow exceptions, provide arbitration or mediation services in Singapore for up to 90 days without requiring a work permit.

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21.

Default appointment of arbitrators

How are arbitrators appointed where no nomination is made by a party or parties or the selection mechanism fails for any reason? Do the courts have any role to play?

Under section 9 of the IAA and section 12 of the AA, and notwithstanding article 10(2) of the Model Law, a tribunal shall consist of a sole arbitrator where the parties cannot agree on the number of arbitrators. Where a party fails to make a nomination, or the selection mechanism fails, any party may request the court or the President of the Court of Arbitration of the SIAC to make the appointment.

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22.

Immunity

Are arbitrators afforded immunity from suit under the law of your jurisdiction and, if so, in what terms?

Yes. Under section 25 of the IAA and section 20 of the AA, an arbitrator shall not be liable for negligence for anything done or omitted to be done in the capacity of arbitrator, or any mistake in law, face or procedure made in the course of proceedings or in making the award.

Institutional rules also often afford arbitrators immunity. For example, Rule 38 of the 2016 SIAC Rules provides for the exclusion of liability of arbitrators for any negligence, act or omission in connection with a SIAC-administered arbitration.

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23.

Securing payment of fees

Can arbitrators secure payment of their fees in your jurisdiction? Are there fundholding services provided by relevant institutions?

The IAA and AA do not make provision for arbitrators to securing payment of their fees. However, in institutional arbitration, many rules provide for the parties to make deposits with respect to such fees. For example, Rule 34 of the SIAC provides that the Registrar of the SIAC shall fix the amount of deposits payable, and if a party fails to pay such deposits either wholly or in part, the tribunal may suspend its work and the SIAC may also suspend administration of the arbitration. The Registrar may also set a deadline for payment after which the relevant claims and/or counterclaims will be considered withdrawn. The SIAC provides fundholding services both for arbitrations under the SIAC Rules and for ad hoc arbitrations.

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Challenges to arbitrators

24.

Grounds of challenge

On what grounds may a party challenge an arbitrator? How are challenges dealt with in the courts or (as applicable) the main arbitration institutions in your jurisdiction? Will the IBA Guidelines on Conflicts of Interest in International Arbitration generally be taken into account?

A party may challenge an arbitrator if circumstances that give rise to justifiable doubts as to his or her impartiality or independence exist, or if he/she does not possess qualifications agreed to by the parties. Under article 13 of the Model Law and section 15 of the AA, parties are free to agree on a procedure for challenging arbitrators. Under the default procedure in those provisions, challenges are dealt with by the tribunal. Where the challenge is unsuccessful, the party making the challenge may request the Singapore High Court to determine the challenge. Under the 2016 SIAC Rules, challenges are dealt with by the SIAC Court of Arbitration.

In practice, the IBA Guidelines on Conflicts of Interest in International Arbitration will typically be used as non-binding guidance in determining challenges to arbitrators.

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Interim relief

25.

Types of relief

What main types of interim relief are available in respect of international arbitration and from whom (the tribunal or the courts)? Are anti-suit injunctions available where proceedings are brought elsewhere in breach of an arbitration agreement?

For international arbitrations in Singapore, an arbitral tribunal has broad-ranging powers to make orders or give directions to any party for ‘an interim injunction or any other interim measure’ pursuant to section 12(1)(i) of the IAA. This includes the interim custody of assets and evidence. Such power is also provided for under article 17 of the Model Law. The courts in Singapore have, for the most part, the same broad-ranging powers in support of international arbitrations when the tribunal has no power or is unable for the time being to act effectively.

Anti-suit injunctions are available in support of international arbitrations both as an interim relief and, albeit on a different legal basis, as a permanent relief when proceedings are brought in breach of an arbitration agreement.

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26.

Security for costs

Does the law of your jurisdiction allow a court or tribunal to order a party to provide security for costs?

Singapore law permits a tribunal to order a party to provide security for costs under section 12(1)(a) of the IAA and section 28(2)(a) of the AA. A tribunal cannot make a security for costs order by reason only that the claimant is a foreign individual, corporation or association.

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Procedure

27.

Procedural rules

Are there any mandatory rules in your jurisdiction that govern the conduct of the arbitration (eg, general duties of the tribunal and/or the parties)?

The conduct of arbitral proceedings is governed by articles 18–27 of the Model Law. Article 18 requires that the parties be treated with equality and shall each be given a full opportunity of presenting their case. Other than this mandatory rule, the parties are generally free to determine the arbitral procedure, and the tribunal may conduct the arbitration in the manner it thinks appropriate if parties cannot agree.

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28.

Refusal to participate

What is the applicable law (and prevailing practice) where a respondent fails to participate in an arbitration?

Under article 25(b) of the Model Law, where a respondent fails to participate in an arbitration, the tribunal can continue proceedings without treating such failure in itself as an admission of the claimant’s allegations. The tribunal may also make its award on the evidence before it notwithstanding the respondent’s failure to participate. In practice, a claimant still needs to prove its case where a respondent does not participate in the proceedings, and the tribunal will determine the claims based on the evidence placed before it.

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29.

Admissible evidence

What types of evidence are usually admitted, and how is evidence usually taken? Will the IBA Rules on the Taking of Evidence in International Arbitration generally be taken into account?

Rules on evidence are, like other rules of procedure, either agreed by the parties or decided by the tribunal failing their agreement. In particular, article 19(2) of the Model Law gives a tribunal the power to determine the admissibility, relevance, materiality and weight of any evidence. Parties typically agree to use the IBA Rules on the Taking of Evidence in International Arbitration as non-binding guidance for taking evidence. Written evidence from witnesses of fact and expert witnesses is usually presented by the parties in advance of an evidentiary hearing where it is then tested under cross-examination. Hearsay evidence is admissible.

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Court assistance

Will the courts in your jurisdiction play any role in the obtaining of evidence?

Under article 27 of the Model Law, a tribunal or a party (with the tribunal’s approval) may request the Singapore courts to assist with obtaining evidence. Section 13 of the IAA and section 30 of the AA provide that that the courts may issue a subpoena to compel a witness to testify or to produce documents.

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31.

Document production

What is the relevant law and prevailing practice relating to document production in international arbitration in your jurisdiction?

As noted above, section 12 of the IAA gives international arbitral tribunals specific powers to make orders or give directions for the production of documents and interrogatories. Parties typically agree to use the IBA Rules on the Taking of Evidence in International Arbitration as non-binding guidance for taking evidence. By adopting the procedure set out in those rules, parties may seek the production of documents from other parties where they are relevant to an issue and material to the outcome of the case. This test seeks to strike a balance between common law ‘discovery’ and the limited obligation to produce documents under civil law systems.

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32.

Hearings

Is it mandatory to have a final hearing on the merits?

Under article 24(1) of the Model Law, the tribunal has to hold hearings at an appropriate stage of the proceedings if requested by a party. However, hearings may be dispensed with if both parties agree.

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33.

Seat or place of arbitration

If your jurisdiction is selected as the seat of arbitration, may hearings and procedural meetings be conducted elsewhere?

Yes. Under article 20(1) of the Model Law, the place of hearings and meetings may be conducted outside of Singapore notwithstanding that the seat is Singapore.

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Award

34.

Majority decisions

Can the tribunal decide by majority?

Yes. Article 29 of the Model Law provides that the tribunal is to make any decision by majority. Where the parties or all members of the tribunal agree, the presiding arbitrator alone may also decide on questions of procedure.

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35.

Limitations to awards and relief

Are there any particular types of remedies or relief that an arbitral tribunal may not grant?

Under section 12(5) of the IAA and sections 34 and 35 of the AA, an arbitral tribunal may grant any remedy or relief that a High Court in Singapore could have ordered if the dispute had been the subject of civil proceedings in that court. This also includes the award of any interest.

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36.

Dissenting arbitrators

Are dissenting opinions permitted under the law of your jurisdiction? If so, are they common in practice?

Dissenting opinions are permitted. They are relatively uncommon in practice.

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Formalities

What, if any, are the legal and formal requirements for a valid and enforceable award?

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Time frames

What time limits, if any, should parties be aware of in respect of an award? In particular, do any time limits govern the interpretation and correction of an award?

Unless the parties have agreed otherwise, they have 30 days within receipt of the award to apply to the tribunal for corrections to or an interpretation of part of the award. A party may apply to set aside the award within three months from receipt of the award or from the date corrections or an interpretation of the award is made by the tribunal.

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Costs and interest

39.

Costs

Are parties able to recover fees paid and costs incurred? Does the "loser pays" rule generally apply in your jurisdiction?

The arbitral tribunal has broad discretion to award costs. A party may recover fees paid and costs incurred from another party if so determined by the tribunal. As a general rule, the ‘loser pays’ rule applies.

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40.

Interest on the award

Can interest be included on the principal claim and costs? Is there any mandatory or customary rate?

Interest may be awarded on a simple or compound basis on the whole or any part of any sum claimed pursuant to section 20 of the IAA and section 35 of the AA. Where appropriate, a tribunal may apply a contractual rate of interest on sums due under an agreement. Otherwise, there is no mandatory rate of interest. In determining an appropriate rate of interest, tribunals may sometimes be guided by the statutory rate of interest on a judgment debt in Singapore, which is currently 5.33 per cent.

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Challenging awards

41.

Grounds for appeal

Are there any grounds on which an award may be appealed before the courts of your jurisdiction?

An arbitral award is final and binding under Singapore law pursuant to section 19B of the IAA and section 44 of the AA. For domestic arbitrations only, a limited ground of appeal is available on a question of law arising out of an award.

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42.

Other grounds for challenge

Are there any other bases on which an award may be challenged, and if so what?

An award may be challenged and set aside at the discretion of the courts if one or more of the grounds of challenge under article 34 of the Model Law or section 24 of the IAA can be demonstrated.

The grounds in article 34 of the Model Law replicate those under article V of the New York Convention 1958 for the refusal of recognition and enforcement of an award and can be summarised as follows: (i) incapacity of a contracting party or an invalid arbitration agreement; (ii) inability of a party to present its case; (iii) the award contains a decision made by the tribunal in excess of its jurisdiction; (iv) the composition of the tribunal or the arbitral proceedings were not in accordance with the parties’ agreement or the law; (v) the subject matter of the dispute is non-arbitrable; and (vi) the award is in conflict with public policy of Singapore.

Section 24 of the IAA provides two additional grounds for setting aside an award, namely where it was induced or affected by fraud or corruption, or if a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced.

Section 48 of the AA contains the same provisions as those set out above with respect to domestic arbitrations.

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Modifying an award

Is it open to the parties to exclude by agreement any right of appeal or other recourse that the law of your jurisdiction may provide?

The parties may agree to exclude any right of appeal under the IAA or the AA. Many institutional rules provide for a waiver of rights of appeal: see, for example, Rules 32.11 and 40.2 of the 2016 SIAC Rules. Parties may not waive their rights to set aside an award made in Singapore.

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Enforcement in your jurisdiction

44.

Enforcement of set-aside awards

Will an award that has been set aside by the courts in the seat of arbitration be enforced in your jurisdiction?

Under section 31(2)(f) of the IAA, if an arbitral award has been set aside or suspended by the courts in the seat of arbitration, the Singapore courts may refuse enforcement of such an award. Although the matter has not specifically come before the courts for determination, the Court of Appeal in PT First Media TBK (formerly known as PT Broadband Multimedia TBK) v Astro Nusantara International BV and others and another appeal [2014] 1 SLR 372 has expressed doubts, albeit obiter, about enforcing such awards.

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45.

Trends

What trends, if any, are suggested by recent enforcement decisions? What is the prevailing approach of the courts in this regard?

Singapore’s courts have long adopted a policy of minimal curial intervention in arbitration matters. This policy is reflected in its approach to enforcement of arbitral awards. The courts have found that enforcement is a mechanistic process where one of the statutory grounds for refusal must be made out. The courts have found that they have no residual discretion to refuse to enforce an award outside those grounds. The courts have also confined attempts by parties to set aside awards on the basis of breach of natural justice where those attempts have been thinly concealed attempts to re-litigate the merits of the dispute disposed of in the arbitration.

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State immunity

To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?

The distinction between immunity from suit and immunity from execution is recognised in Singapore. It has also been accepted by the Singapore courts in Maldives Airports Co Ltd and another v GMR Malé International Airport Pte Ltd [2013] SGCA 16 that a state can waive its immunity from the former and be a party to arbitration. However, a state or state entity may successfully raise a defence of state immunity and/or the “act of state” doctrine later at the enforcement stage. In Josias Van Zyl and others v Kingdom of Lesotho [2017] SGHC 104, the High Court held that state immunity applies in relation to service of process in order enforce the final award on costs, and therefore an application for substituted service on the respondent State’s Singapore counsel was refused.

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Further considerations

47.

Confidentiality

To what extent are arbitral proceedings in your jurisdiction confidential?

The IAA and AA do not expressly provide for the protection of confidentiality in arbitral proceedings. However, the Singapore courts have found parties owe an implied duty of confidentiality with respect to arbitration proceedings. Many institutional rules provide for confidentiality, such as Rule 39 of the 2016 SIAC Rules.

Although the arbitration legislation does not make reference to confidentiality, section 22 of the IAA and section 56 of the AA provide that court proceedings in relation to arbitrations will be heard otherwise than in open court on the application of any party to the proceedings. Such a party may also apply for information relating to the proceedings to be sealed or redacted under section 23 of the IAA and section 57 of the AA.

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48.

Evidence and pleadings

What is the position relating to evidence produced and pleadings filed in the arbitration? Are these confidential? Is there any way that they might be relied on in other proceedings (whether arbitral or court proceedings)?

In general, evidence and pleadings produced and filed in the course of an arbitration are treated as confidential and cannot be relied on in other proceedings. The duty of confidentiality under institutional rules such as Rule 39 of the 2016 SIAC Rules extends to keeping confidential the existence of the proceedings, pleadings, evidence and other materials in the arbitral proceedings and all other documents produced by another party in the proceedings or the Award arising from the proceedings under Rule 39.3.

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Ethical codes

What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your jurisdiction?

There are no ethical codes or other professional standards that apply to counsel conducting arbitration in Singapore, although counsel may be bound by the ethical codes of the jurisdiction where they practice and/or by ethical obligations imposed by institutional rules, such as the LCIA Rules of Arbitration. Arbitrators in SIAC arbitration proceedings are subject to the SIAC’s Code of Ethics for an Arbitrator.

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Procedural expectations

Are there any particular procedural expectations or assumptions of which counsel or arbitrators participating in an international arbitration with its seat in your jurisdiction should be aware?

There are no particular procedural expectations or assumptions in an international arbitration seated in Singapore. Parties are generally free to agree on arbitral procedures, subject to article 18 of the Model Law, namely that parties are to be treated with equality and given a full opportunity of presenting their case. As a common law jurisdiction, proceedings are generally adversarial rather than inquisitorial; the witness conferencing of expert witnesses is common.

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51.

Third-party funding

Is third-party funding permitted in your jurisdiction?

Yes. The doctrine of maintenance and champerty has been abolished by the Civil Law (Amendment) Act 2017, thereby permitting third party funding for arbitrations in Singapore. In July 2017, news of the first arbitration case to be funded in the jurisdiction was reported.