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Singapore

INTERNATIONAL ARBITRATION

Contributor

WongPartnership LLP

CHOU Sean Yu

Deputy Managing Partner; Head – Litigation & Dispute Resolution Group; Head – Banking & Financial Disputes; Partner – International Arbitration, Financial Services Regulatory and Malaysia Practices | seanyu.chou@wongpartnership.com

KOH Swee Yen, Senior Counsel

Head – International Arbitration; Partner – Commercial & Corporate Disputes | sweeyen.koh@wongpartnership.com

LIM Wei Lee

Deputy Head – Banking & Financial Disputes; Partner - International Arbitration | weilee.lim@wongpartnership.com

Alessa Pang

Partner – Commercial & Corporate Disputes | alessa.pang@wongpartnership.com

This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in Singapore.

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SINGAPORE
INTERNATIONAL ARBITRATION

1. What legislation applies to arbitration in your country? Are there any mandatory laws?

In Singapore, the International Arbitration Act 1994 ("**IAA**") and the Arbitration Act 2001 ("**AA**") apply.

The IAA generally applies to international commercial arbitrations seated in Singapore.[1] Section 3(1) of the IAA gives the UNCITRAL Model Law on International Commercial Arbitration ("**Model Law**") (with the exception of Chapter VIII) the force of law in Singapore. Part III of the IAA also gives effect to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) ("**New York Convention**"). The IAA also governs the recognition and enforcement of a foreign award, which is defined by s 27 of the IAA as an arbitral award made pursuant to an arbitration agreement in the territory of a New York Convention country other than Singapore.

The AA applies to any arbitration seated in Singapore, which is not an international arbitration (as defined in s 5(2) of the IAA). However, parties may agree in writing to the application of Part II of the IAA or of the Model Law to apply to domestic arbitration which would otherwise be governed by the AA.

While the IAA does not set out a list of provisions which are considered mandatory, it is generally accepted that parties cannot derogate from fundamental matters which are necessary for the proper conduct of the arbitration, for e.g., Article 18 of the Model Law, which provides that 'parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.' This principle is reflected in s 15A of the IAA, which provides that '[t]o avoid doubt, it is declared that a provision of rules of arbitration agreed to or adopted by the parties, whether before or after the commencement of the arbitration, applies and is given effect to the extent that the provision is not inconsistent with a provision of the Model Law or this Part from which the parties cannot derogate.'

Footnotes:

[1] International arbitration is defined under s 5(2) of the IAA.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Yes, Singapore is a signatory to the New York Convention. Singapore has made the reciprocity reservation.[2] This means that Singapore courts would only apply the New York Convention to awards made in the territory of another Contracting State. Pursuant to s 46(3) of the AA, arbitral awards made in non-New York Convention jurisdictions can be enforced in accordance with the procedure for enforcement of a domestic arbitral award.

Footnotes:

[2] 1958 New York Convention Guide, https://newyorkconvention1958.org/index.php?lvl=cmspage&pageid=11&menu=843&opac_view=-1

3. What other arbitration-related treaties and conventions is your country a party to?

Singapore is a contracting state of the ICSID Convention, and currently has 42 international investment agreements in force, and has entered into 21 free trade agreements which contain investment chapters.[3]

Singapore is also a party to the Singapore Convention on Mediation, which applies to international settlement agreements arising from mediation. It serves to facilitate the enforcement of such settlement agreements for parties to a mediation, and therefore serves as an additional dispute resolution option to litigation and arbitration.

Footnotes:

[3] https://www.mti.gov.sg/Trade/International-Investment-Agreements

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

Yes, the IAA is based on the Model Law. The IAA was enacted in 1994 to replace the English arbitration regime which Singapore's arbitration law was previously based on. Section 3(1) of the IAA provides that the UNCITRAL Model Law has the force of law in Singapore. The main difference is that s 3(1) of the IAA expressly states that Chapter VIII (on Recognition and Enforcement of Awards) of the Model Law does not have force of law in Singapore. However, note that in *PT First Media TBK v Astro Nusantara International BV and ors* [2014] 1 SLR 372 ("*Astro*"), the Court of Appeal held (at [84]) that 'the most efficacious method of giving full effect to the Model Law philosophy would … be to recognise that the same grounds for resisting enforcement under Art 36(1) are equally available to a party resisting enforcement under s 19 of the IAA.'

5. Are there any impending plans to reform the arbitration laws in your country?

The IAA was recently amended by the International Arbitration (Amendment) Act 2020 on 1 December 2020. Amongst other amendments introduced, the amendment legislation introduced a default method of appointment of arbitrators in multi-party arbitrations, and also expanded the scope of the tribunal's authority to enforce confidentiality obligations in arbitration.

As explained below in response to Question 40, with effect from 4 May 2022, conditional fee arrangements can be entered into between lawyers and clients in certain categories of proceedings, including international and domestic arbitration proceedings and related court and mediation proceedings.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

The following arbitral institutions have presence in Singapore:

	Name of Arbitral Institution	Applicable institutional rules
1.	Singapore International Arbitration Centre (SIAC)	The current 6th Edition of the SIAC Arbitration Rules was last amended on 1 August 2016. SIAC released its draft 7th edition of the SIAC Arbitration Rules on 22 August 2023, and it is currently conducting a public consultation on the draft.
2.	Singapore Chamber of Maritime Arbitration (SCMA)	The current version of the SCMA Arbitration Rules (4th Edition) came into force on 1 January 2022
3.	International Court of Arbitration of the International Chamber of Commerce (ICC)	The current version of the ICC Rules of Arbitration came into force on 1 January 2021.
4.	Permanent Court of Arbitration (PCA)	The PCA Arbitration Rules (2012) are the PCA's newest set of procedural rules.
5.	International Centre for Dispute Resolution (ICDR)	ICDR International Dispute Resolution Procedures (2021) were amended and effective on 1 March 2021.
6.	World Intellectual Property Organization (WIPO) Arbitration and Mediation Center	The WIPO Arbitration Rules (2021) are effective from 1 July 2021.
7.	Beihai Asia International Arbitration Centre (BAIAC)	BAIAC 2019 Arbitration Rules have been in force since 1 October 2019.

7. Is there a specialist arbitration court in your country?

There is no specialist arbitration court in Singapore. However, arbitration matters are managed by the Companies, Insolvency, Equity & Trusts and Arbitration ("**CITA**") docket of the General Division of the High Court. There are specific judges who are assigned to the specialised arbitration list of the General Division of the High Court to hear arbitration matters,[4] and the Supreme Court of Singapore has issued a Registrar's Circular which guides the conduct of arbitration matters commenced under the IAA with the General Division of the High Court.[5] The SICC also has jurisdiction to hear international arbitration-related matters.

Footnotes:

[4] https://www.judiciary.gov.sg/who-we-are/role-structure-supreme-court/role

[5] https://www.judiciary.gov.sg/docs/default-source/circulars/2023/registrar's_circular_no_1_2023_supreme_court.pd

f?sfvrsn=d63da9e2_2

8. What are the validity requirements for an arbitration agreement under the laws of your country?

Section 2A of the IAA provides that an arbitration agreement must be in writing, and can be in the form of an arbitration clause or a separate agreement.

Section 2A(4) of the IAA specifically provides that an arbitration agreement is '*in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct or other means*'.

9. Are arbitration clauses considered separable from the main contract?

Yes. Arbitration clauses are considered separable from the main contract pursuant to Article 16(1) of the Model Law, which states in its relevant part that '[t]he arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement' and '[f]or that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract…'

10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

In *Anupam Mittal v Westbridge Ventures II Investment Holdings* [2023] SGCA 1 ("**Westbridge**"), the Singapore Court of Appeal ruled that Indian law would have been the implied choice of law to govern the arbitration agreement 'unless there is something in the circumstances that negates that implied choice' (*Westbridge* at [70]). The court then went on to find that 'there are sufficient indications to negate the implication that Indian law was intended to govern the arbitration agreement in the SHA as that implication would mean frustrating the parties' intention to arbitrate all their disputes', as the application of Indian law to govern the arbitration agreement would have meant that the subject-matter of the dispute was not arbitrable (*Westbridge* at [74]). The Singapore Court of Appeal thus found instead that Singapore law governed the arbitration agreement.

It has been suggested that the Court of Appeal had applied the validation principle in *Westbridge*. However, it remains to be clarified whether this is the case. In *BNA v BNB and anor [2019] SGHC 142* ("*BNA(HC)*"), the judge (hearing the application at first instance) had expressly rejected the validation principle in Singapore law, having considered that adopting the validation principle was impermissibly instrumental (*BNA(HC)* at [53]), could be inconsistent with the parties' intentions (*BNA(HC)* at [55]), was unnecessary because Singapore law already endorsed the *ut res magis* principle (*BNA(HC*) at [62]), and could create problems at the enforcement stage (*BNA(HC*) at [65]).

On appeal in *BNA v BNB [2020] 1 SLR 456* ("*BNA(CA)*"), the Court of Appeal declined to take a view on the validation principle, as on its analysis, it was 'unnecessary' to deal with it (*BNA(CA)* at [95]). In *Westbridge*, the Court of Appeal distinguished *BNA* on the basis that the facts 'demonstrate, much more strongly, the parties' desire for all disputes to be resolved by arbitration' (*Westbridge* at [72]).

11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

Yes. The IAA provides for the default method of appointment of three arbitrators in a multi-party arbitration. The appointing authority must, upon the request of any party, appoint all three arbitrators and designate any one of the arbitrators as the presiding arbitrator if (a) the claimant or claimants fail to appoint an arbitrator, or fail to inform the respondent or respondents of such appointment, by the date specified; or (b) the respondent or respondents fail to appoint an arbitrator, or fail to inform the claimant or claimants of such appointment, within the time specified.[6]

Footnotes:

[6] Section 9(B)(2) of IAA

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

The Singapore courts generally refrain from "extending" an arbitration agreement to a third party or non-signatory in the absence of consent between the parties. The approach is based on the principle that arbitration is

a consensual process.[7] An examination of the Singapore cases would reveal that the courts ultimately examine whether consent can be found on the facts.

In *COT v COU and anor* [2023] SGCA 31 ("**COT**"), the Singapore Court of Appeal declined to set aside an arbitral award on the basis that no contract or arbitration agreement had been concluded between the parties. At the material time, the appellants were members of the same multinational group of companies, which the court referred to as "**Rohan Group**" in the judgment. In addition to the argument that no contract had been formed between the parties, the appellants contended even if a binding contract had been concluded, two out of the three appellants (referred to as "**Project Company**", and "**EPC Company**") were not parties to the contract, as only the third appellant (referred to as "**Shareholder Company**") was a named signatory to the contract. The Project Company and the EPC Company also argued that they were not parties to any contract concluded during the negotiations because the representatives who purported to represent the Rohan Group did not have the authority to bind them to a contract (COT at [44] and [45]). In determining whether a binding contract was concluded between the parties, the court emphasised that a court hearing a setting aside application premised on the absence of a binding contract need only concern itself with whether such a contract existed, and 'the standard of review undertaken by the seat court is de novo' (COT at [29] and [39]). Further, while there may be some analysis of the terms necessary to determine the parties to the contract, 'the court hearing the setting aside application only needs to determine such terms on a prima facie basis for this precise purpose' (COT at [39]). The court also stated that the 'primary test when analysing the totality of the evidence is to find if there was an intention to enter into a binding contract' and that the 'test of a person's intention is an objective one' (COT at [47]). Having examined the factual context, the court found that a binding contract was concluded between the parties as 'the exchange of correspondence and the parties' conduct during the [negotiations] lead to the necessary inference that a contract was concluded between [all the parties]' (COT at [61]).

In *CJD v CJE* [2021] SGHC 61 the court rejected the argument that simply being a signatory to the joint venture agreement (and therefore the arbitration agreement) was sufficient in and of itself to constitute consent of joinder by a third party (the parent company in this case). The court upheld the tribunal's decision on rejection of joinder since there was no consent expressed through express wording by the third party.

In *Manuchar Steel Hong Kong Limited v Star Pacific Line Pte Ltd* [2014] 4 SLR 832, the Singapore High Court dismissed Manuchar's application for discovery against Star Pacific Line, in support of enforcement of arbitral awards issued against SPL Shipping, on the basis that both were part of a 'single economic entity'. In dismissing the appeal, the court held at [69] that as a matter of arbitration law, the awards could not be enforced against Star Pacific because Star Pacific was neither a party to the arbitration agreement from which the arbitral awards arose, nor was Star Pacific a named debtor under the Awards. Borrowing the words of the Singapore Court of Appeal in Astro (at [198]), the Singapore High Court stated (at [70]) that '[e]nforcing an award against a party in the shoes of Star Pacific in these circumstances would be anathema to the "internal logic of the consensual basis of an agreement to arbitrate"'.

In *Aloe Vera of America, Inc v Asiania Food (S) Pte Ltd and anor* [2006] 3 SLR(R) 174 ("**Aloe Vera**"), the Singapore Court of Appeal rejected the 2nd appellant's contention that the order granting leave to enforce the arbitral award should be set aside on the basis that enforcement of the award would be contrary to the public policy of Singapore, as it would be against public policy to enforce an award made on the basis of the alter ego theory 'because the Arbitrator's decision had pierced the corporate veil without any supporting evidence' (Aloe Vera at [74]). Amongst other reasons cited, the court held that enforcement of the award 'would not by any stretch of imagination offend against the most basic of the notions of justice that the Singapore court adheres to', as 'Singapore legal principles … recognise that a person who is not named in a particular contract may in fact be a party to it and responsible for the obligations purportedly undertaken by somebody else' and '[s]uch liability can be imposed on the basis of theories such as alter ego and agency' (Aloe Vera at [76]).

In *International Research Corp PLC v Lufthansa Systems Asia Pacific Pte Ltd and anor* [2014] 1 SLR 130 ("**International Research Corp**"), the appellant ("**IRC**") challenged the arbitral tribunal's finding that it had jurisdiction over IRC pursuant to an arbitration agreement contained in a main agreement (referred to as "**Cooperation Agreement**"), as IRC was not a party to the Cooperation Agreement. IRC contended that it was only party to supplemental agreements pursuant to which the 2nd respondent agreed to transfer moneys to IRC, and which IRC would then use to pay to the 1st respondent. The court allowed IRC's appeal, finding that 'on a contextual interpretation of the [supplemental agreements], that the parties had not intended that the Dispute Resolution Mechanism (including the arbitration clause) contained in the Cooperation Agreement was to

be incorporated as part of the [supplemental agreements]' and IRC was accordingly not bound by it and the tribunal did not have jurisdiction over IRC and its dispute with the Respondent (International Research Corp PLC at [53]).

Footnotes:

[7] Bernard Hanotiau, 'Practical Insights on Third Parties – Multi-Party Arbitration, Groups of Companies and Non-Signatories – Singapore', Practical Insights on Arbitral Procedure (© Kluwer Law International; Kluwer Law International)

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

Pursuant to s 11(1) of the IAA, any dispute is arbitrable unless 'it is contrary to public policy to do so'. The IAA does not define the types of disputes that are not arbitrable on grounds of public policy. It is left to the Singapore courts to determine the arbitrability of a dispute.

The *Singapore Court of Appeal held in Larsen Oil and Gas Pte Ltd v Petroprod Ltd* [2011] SGCA 21 that there is a rebuttable presumption that a dispute will be arbitrable under Singapore law so long as the dispute falls within the scope of an arbitration clause.[8]

Examples of the types of disputes the Singapore courts have identified as non-arbitrable include:

(a) a claim arising from a champertous contract;[9]

(b) insolvency-related claims, such as avoidance[10] or winding-up[11] claims by a company in liquidation under the Bankruptcy Act (Cap 20, 2009 Rev Ed), and claims by liquidators with respect to charges under s 131 of the Companies Act (Cap 50, 2006 Rev Ed).[12]

In *Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals* [2015] SGCA 57, the Singapore Court of Appeal held (at [84]) that disputes concerning minority oppression or unfair prejudice were arbitrable as that there was nothing in the text of s 216 of the Companies Act or its legislative history and statutory purpose which suggested that such a dispute was of a nature which made it contrary to public policy for it to be adjudicated by an arbitral tribunal.

Further, on 21 November 2019, the IAA and AA were both amended to expressly stipulate that intellectual property rights disputes are arbitrable. Hence, s 26B of the IAA now provides that '[t]he subject matter of an [intellectual property right] is capable of settlement by arbitration as between parties to the [intellectual property right] dispute.' An identical provision is found in s 52B of the AA.

Footnotes:

[8] *Larsen Oil and Gas Pte Ltd v Petroprod Ltd* [2011] SGCA 21 at [44].

[9] *Otech Pakistan Pvt Ltd v Clough Engineering Ltd & Anor* [2007] 1 SLR(R) 989 at [38].

[10] *Petroprod Ltd (in official liquidation in the Cayman Islands and in compulsory liquidation in Singapore) v Larsen Oil and Gas Pte Ltd* [2010] 4 SLR 501 at [16] and [22].

[11] *Four Pillars Enterprises Co Ltd v Beiersdorf Aktiengesellschaft* [1999] 1 SLR(R) 382 at [23]

[12] *Duncan, Cameron Lindsay & Anor v Diablo Fortune Inc & Anor Matter* [2017] SGHC 172 at [14].

14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

Yes. In Westbridge, the Singapore Court of Appeal applied[13] the three-stage test laid down in *BCY v BCZ* [2017] 3 SLR 357, which involves the following:

Stage 1: Whether parties expressly chose the proper law of the arbitration agreement.

Stage 2: In the absence of an express choice, whether parties made an implied choice of the proper law to govern the arbitration agreement, with the starting point for determining the implied choice of law being the law of the contract.

Stage 3: If neither an express choice nor an implied choice can be discerned, which is the system of law with which the arbitration agreement has its closest and most real connection.

The court therefore applied the test as follows in Westbridge:

At Stage 1, the initial query is whether the parties expressly chose the proper law of the arbitration agreement.[14] Affirming BNA(CA) (at [59]), the court agreed with the respondent that specifying that the

contract shall be governed by a particular law is 'insufficient to constitute an express choice of the proper law of the arbitration agreement'. The court stated that '[a]n express choice of law for an arbitration agreement would only be found where there is explicit language stating so in no uncertain terms'[15].

At Stage 2, the court considered whether the parties' choice of Indian law to govern the shareholders' agreement would make Indian law the implied choice of law to govern the arbitration agreement. This is because '[a]s a general rule, a choice of law for the main contract will lead a court to hold that the same law also applies to govern the arbitration agreement'.[16] Indian law would therefore be found to the proper law of the arbitration agreement 'unless there is something in the circumstances that negates that implied choice'.[17] In the present case, the court noted the parties' intention for their disputes to be settled by arbitration'. This intention would not be consistent with an implied choice of Indian law as the proper law of the arbitration agreement as this would 'negate the agreement since oppression claims ... are not arbitrable in India'.[18] The court was therefore satisfied that there were sufficient indications to negate the implication that Indian law was intended to govern the arbitration agreement as 'that implication would mean frustrating the parties' intention to arbitrate all their disputes'.[19]

At Stage 3, the court considered which law has the 'most real and substantial connection with the arbitration agreement'.[20] The arbitration clause in the shareholders' agreement provided that the arbitration would take place in Singapore, and as the law of the seat of the arbitration, Singapore law would govern the procedure of the arbitration. The court therefore concluded that Singapore law was the law of the arbitration agreement.[21]

Footnotes:

[13] Westbridge at [62].

[14] Westbridge at [63].

[15] Westbridge at [66].

[16] Westbridge at [67].

[17] Westbridge at [70].

[18] Westbridge at [73].

[19] Westbridge at [74].

[20] Westbridge at [75].

[21] Westbridge at [75].

15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

The proper law of the contract is determined in three stages:

Express choice: If the parties to the contract have expressly selected a law to govern the contract, that will be the proper law (the subjective proper law), unless the choice was not made in good faith (*Pacific Recreation Pte Ltd v S Y Technology Inc* [2008] 2 SLR 491; *Peh Teck Quee v Bayerische Landesbank Girozentrale* [1999] 3 SLR(R) 842). The exception is narrowly construed. The choice of an unconnected law is not in itself objectionable.

Implied choice: If the parties have not expressly selected any law to govern the contract, the court may infer a choice from the contract and the surrounding circumstances at the time of the making of the contract.

Closest connection: If the court cannot determine any express or implied choice of law, then the proper law is the law of the country or system of law with the closest and most real connection with the transaction and the parties (the objective proper law).

16. In your country, are there any restrictions in the appointment of arbitrators?

Parties are free to agree on the number, composition and credentials of the arbitrators who will form the tribunal.[22] Article 11(1) of the Model Law provides that unless otherwise agreed by the parties, no person shall be precluded by reason of his nationality from acting as an arbitrator. Section 9 of the IAA provides that if the number of arbitrators is not determined by the parties, the default is that there shall be a sole arbitrator.[23]

Footnotes:

[22] Arbitration in Singapore, A Practical Guide Second Edition at [3.054]

[23] Section 9 of IAA read with Art. 10 of Model Law; Section 12 of AA

17. Are there any default requirements as

to the selection of a tribunal?

Article 11(2) of the Model Law provides that parties are free to agree on a procedure for appointing the arbitrator(s).

In the absence of an agreed procedure, s 9A of the IAA provides for a default method of appointment of three arbitrators for arbitrations involving two parties. Each party must appoint one arbitrator, and the parties must by agreement appoint the third arbitrator. Where the parties fail to agree on the appointment of the third arbitrator within 30 days after the receipt of the first request by either party to do so, the appointment must be made, upon the request of a party, by the appointing authority. In an arbitration with a sole arbitrator, Art 11(3)(b) of the Model Law provides that if parties are unable to agree on the arbitrator, the sole arbitrator shall be appointed, upon request of a party, by the designated appointing authority.

Where three arbitrators are to be appointed in a multi-party arbitration, s 9B of the IAA provides that the appointing authority must, upon the request of any party, appoint all three arbitrators and designate any one of the arbitrators as the presiding arbitrator if (a) the claimant(s) fail to appoint an arbitrator, or fail to inform the respondent(s) of such appointment, by the date specified; or (b) the respondent(s) fail to appoint an arbitrator, or fail to inform the claimant(s) of such appointment, within the time specified.[24]

Footnotes:

[24] Section 9(B)(2) of IAA

18. Can the local courts intervene in the selection of arbitrators? If so, how?

Section 8(2) of the IAA expressly states that the President of the Court of Arbitration of SIAC is the appointing authority under Art 11(3) and (4) of the Model Law.

Section 8(3) of the IAA provides that the Chief Justice of Singapore may appoint any other person to exercise the powers of the President of the Court of Arbitration of the SIAC under subsection (2).

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

Yes. An arbitrator's appointment may be challenged if: (1) circumstances exist which give rise to justifiable doubts as to his or her impartiality or independence;[25] or (2) he or she does not possess the qualifications agreed to by the parties.[26] Such circumstances include any personal, business or professional relationship with the parties to the dispute or an interest in the outcome of the dispute.

Article 13(1) of the Model Law provides that parties are free to agree on a procedure for challenging an arbitrator. In the absence of such agreement, Art 13(2) provides for a default procedure. Unless the challenged arbitrator withdraws from his appointment or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge. Article 13(3) of the Model Law provides that a decision of the tribunal or of the institution dismissing the challenge is subject to the decision of the General Division of the High Court to review such decision. The decision of the court is not subject to appeal. If the arbitration is administered, the administering institution will in the first instance decide on challenge.

Footnotes:

[25] Sect. 14(3)(a), Arbitration Act; Art. 12(2), Model Law (First Schedule, IAA).

[26] Sect. 14(3)(b), Arbitration Act; Art. 12(2), Model Law (First Schedule, IAA).

20. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators

In *CFJ and another v CFL and another and other matters* [2023] SGHC(I) 1, the applicant challenged the appointment of the presiding arbitrator in a SIAC arbitration on the basis that he was appointed to a panel of experts constituted by the highest court in Ruritania (and the defendant was a state-owned entity of Ruritania). The SICC dismissed the challenge, finding (at [75]) that:

'An arbitrator did not have to disclose every single appointment to the parties. An arbitrator only needed to disclose appointments and matters which would cause the fair-minded and informed observer to conclude that there was a real possibility of a lack of impartiality. This was an objective test.'

The SICC specifically found that any alleged connection between the defendant and the presiding arbitrator was

too 'tenuous'[27] and accordingly the presiding arbitrator's non-disclosure of its appointment to the panel of experts constituted by the highest court in Ruritania did not raise doubts.[28]

Footnotes:

[27] [57].

[28] [74] to[75].

21. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

Article 15 of the Model Law provides that where the mandate of an arbitrator has been terminated under Art 13 (due to challenge), or Art 14 (for failure or impossibility to act), or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, 'a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.'

22. Are arbitrators immune from liability?

Yes. This is provided for under s 25 of the IAA, which states that an arbitrator 'shall not be liable for (a) negligence in respect of anything done or omitted to be done in the capacity of arbitrator; and (b) any mistake in law, fact or procedure made in the course of arbitral proceedings or in the making of an arbitral award.'

23. Is the principle of competence-competence recognized in your country?

Yes. Article 16(1) of the Model Law confirms the tribunal's ability to determine its own jurisdiction, subject to review by the courts under s 10(3) of the IAA.

24. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

Pursuant to s 6(1) of the IAA, if a party commences court proceedings in breach of the arbitration agreement, the other party is entitled to 'apply to that court to stay the proceedings so far as the proceedings relate to that matter.' Section 6(2) further provides that the court to which a stay application has been made is to make the order staying the proceedings so far as the proceedings relate to the matter, 'unless it is satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed.'

The Singapore courts may also issue anti-suit injunctions to restrain parties which have commenced foreign litigation proceedings in breach of an arbitration agreement.

In *Sun Travels & Tours Pvt. Ltd. v. Hilton International Manage (Maldives) Pvt. Ltd*. [2019] SGCA 10 ("**Sun Travels**") the Singapore Court of Appeal noted that '[w]ith regard to anti-suit injunctions, relief would ordinarily be granted where there is a breach of an arbitration agreement or an exclusive jurisdiction clause, unless there are strong reasons not to. However, the relief must be sought promptly and before foreign proceedings are too far advanced. Even though anti-suit injunctions operate in personam, they nevertheless indirectly interfere with foreign proceedings.'

In *Westbridge*, the Court of Appeal maintained the permanent anti-suit injunction granted by the High Court to restrain the appellant from continuing with the proceedings it had commenced before the National Company Law Tribunal (NCLT) in Mumbai, India, on the basis that the proceedings had been commenced in breach of the arbitration agreement contained in the shareholders' agreement. The court held that in deciding whether a particular dispute fell within the category of disputes referred to arbitration, the relevant term in the arbitration agreement would be interpreted in accordance with Singapore law, as Singapore law was the governing law of the arbitration agreement (Westbridge at [76]). The court found that 'practically all the complaints made by the appellant in the NCLT proceedings can be said to relate either to the management of the Company or to the [shareholders' agreement] in some way' and accordingly the institution of the NCLT proceedings was a breach of the arbitration agreement (Westbridge at [96]).

25. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

Under Singapore law, it is not mandatory for a respondent to take part in the proceedings. Further, Art 25(b) of the Model Law provides that where 'the respondent fails to communicate his statement of defence in accordance with Article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's

allegations.'

In *Rakna Arakshaka Lanka Ltd v Avant Garde Maritime Services (Pte) Ltd* [2019] 2 SLR 131, the Singapore Court of Appeal held that a respondent who believes that the arbitral tribunal has no jurisdiction is 'perfectly entitled to sit by and do nothing in the belief that either the proceedings will not result in a final award against him or that, if an award is made, he will have valid grounds to resist enforcement.'

26. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

Joinder is generally governed by the procedural law or institutional rules which apply to the arbitration. With the consent of both parties to the arbitration, third parties can voluntarily join arbitration proceedings. However, the tribunal is not bound by the parties' agreement to permit such intervention. For example, Rule 7.10 of the SIAC Rules states that –

'The Tribunal shall, after giving all parties, including the additional party to be joined, the opportunity to be heard, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for joinder under Rule 7.8.'

However, the tribunal cannot agree to the intervention if all parties do not agree to it. Rule 7.8b of the SIAC Rules states that a party may be joined only if all parties, including the additional party to be joined, consent to the joinder.

Other institutional rules, such as r 22.1 (viii) of the LCIA Rules, provide for "forced joinder", i.e. it grants the tribunal the power to add a third party to arbitration provided the third party and the applicant party have consented to such joinder in writing, even if the other party objects to the joinder. In CJD v. CJE [2021] SGHC 61, the Singapore High Court recognised that a "forced joinder" could be upheld if the requirements in the applicable institutional rules were met.

27. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

Pursuant to s 12 of the IAA, an arbitral tribunal has the power to grant a wide range of interim measures such as:-

- security for costs;
- discovery of documents and discovery of facts;
- giving of evidence by affidavit;
- the preservation, interim custody or sale of any property which is or forms part of the subject matter of the dispute;
- samples to be taken from, or any observation to be made of or experiment conducted upon, any property which is or forms part of the subject matter of the dispute;
- the preservation and interim custody of any evidence for the purposes of the proceedings;
- securing the amount in dispute;
- ensuring that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by a party;
- an interim injunction or any other interim measure; and
- enforcing any obligation of confidentiality.

Pursuant to s 12A of the IAA, the General Division of the High Court has powers to order all interim measures as the tribunal as set out in s 12 (except for security of costs and discovery of documents). Sections 12A(3) clarifies that the court has powers to grant interim relief even if the seat of arbitration is not Singapore, unless in the opinion of the court, the fact that the place of arbitration is outside Singapore or likely to be outside Singapore when it is designated or determined makes it inappropriate to make the order. Note however that pursuant to s 12A (6) of the IAA, the court will make an order for interim relief only if and to the extent that the tribunal or institution or person vested by the parties with that power, has no power or is unable for the time being to act effectively.

Article 9 of the Model Law confirms that '[i]t is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.'

28. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

Yes, anti-suit injunctions are available and enforceable in Singapore.

In the case of a breach of an arbitration agreement or an exclusive jurisdiction clause, the Singapore Court of

Appeal held in Sun Travels at [68] that:-

'In cases involving an arbitration agreement or an exclusive jurisdiction clause, it would suffice to show that there was a breach of such an agreement, and anti-suit relief would ordinarily be granted unless there are strong reasons not to: *Donohue v Armco Inc* [2002] 1 All ER 749 ("Donohue"), per Lord Bingham at [24]; *Morgan Stanley Asia (Singapore) Pte v Hong Leong Finance Ltd* [2013] 3 SLR 409 at [29]. There will be no need to adduce additional evidence of unconscionable conduct in such cases. Crucially, however, this approach is subject to an important caveat: there is no requirement for the court to feel any diffidence in granting an anti-suit injunction, "provided that it is sought promptly and before the foreign proceedings are too far advanced": *Aggeliki Charis Compania Maritima SA v Pagnan SpA (The "Angelic Grace")* [1995] 1 Lloyd's Rep 87 at 96.'

More recently, the Singapore Court of Appeal in Westbridge upheld the High Court Judge's decision (in *Westbridge Ventures II Investment Holdings v Anupam Mittal* [2021] SGHC 244) to grant an anti-suit injunction restraining the party from pursuing NCLT proceedings in India, as the proceedings were in breach of the arbitration agreement between the parties (see above in response to Question 24).

29. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

Section 2(1) of the Evidence Act 1893 states that it shall not be applicable to any proceedings before an arbitrator.

Article 19 of the Model Law provides that '[s]ubject to the provisions of [the Model Law], the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings,' and that '[f]ailing such agreement, the arbitral tribunal may, subject to the provisions of [the Model Law], conduct the arbitration in such manner as it considers appropriate.' The provision further confirms that '[t]he power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.'

Section 12(1) of the IAA also provides that '[w]ithout prejudice to the powers set out in any other provision of this Act and in the Model Law, an arbitral tribunal has powers to make orders or give directions to any party for: . . . (c) giving of evidence by affidavit' as well as for '(e) samples to be taken from, or any observation to be made of or experiment conducted upon, any property which is or forms part of the subject matter of the dispute' and for '(f) the preservation and interim custody of any evidence for the purposes of the proceedings'.

As such, the rules of procedure governing evidentiary matters in arbitration in Singapore are generally subject to agreement by the parties, or the arbitral tribunal's discretion as it is empowered by the IAA to determine the admissibility, relevance, materiality and weight of evidence.

Article 27 of the Model Law provides that an arbitral tribunal or a party with the approval of the arbitral tribunal may request a competent court of the State for assistance in taking evidence. The court may then execute the request within its competence and according to its rules on taking evidence.

Further, s 13(2) of the IAA provides that the Singapore High Court 'may order that a subpoena to testify or a subpoena to produce documents shall be issued to compel the attendance before an arbitral tribunal of a witness wherever he may be within Singapore'. However, s 13(4) includes an additional qualification that '[n]o person shall be compelled under any such subpoena to produce any document which he could not be compelled to produce on the trial of an action'.

In *CBS v CBP* [2021] 1 SLR 935, the Singapore High Court set aside an arbitral award issued in Singapore Chamber of Maritime Arbitration (SCMA) proceedings, on the ground that there had been a breach of natural justice arising from the arbitrator's decision to exclude the entirety of a party's (the Buyer in the transaction) witness evidence. The court noted that SCMA Rule 28.1 'does not confer on the arbitrator the power to summarily and effectively exclude all the Buyer's witnesses from giving evidence at the hearing'. The Singapore courts will therefore intervene in evidentiary matters when there is a breach of natural justice.

In *CEF v CEH* [2022] 2 SLR 918 ("**CEF**"), the Singapore Court of Appeal partially set aside an arbitral award, having found that the part of the award ordering the appellants to pay the respondent damages to compensate the respondent for five heads of loss and/or expenses which it would not have incurred but for the first appellant's misrepresentations ("**Damages Order**"), had been issued in breach of the fair hearing rule and should be set aside. The court noted that the tribunal had found the respondent's evidence in support of its reliance loss to be deficient, and yet awarded the respondent 25% of each head of reliance loss rather than dismissing the claim for reliance loss in its entirety.

The court was of the view that the tribunal's chain of reasoning in respect of the Damages Order was 'not one which the parties had reasonable notice that the Tribunal could adopt, nor did it have a sufficient nexus to the parties' arguments' (CEF at [116]). In the court's view, 'a reasonable litigant in the appellants' shoes could not have foreseen the possibility of reasoning of the type revealed in the [arbitral award], i.e., that the [t]ribunal, having noted all the deficiencies in the respondent's evidence, would then go on to drop a figure of 25% of the amount claimed as being the loss incurred' and '[i]nstead, the parties would have expected the [t]ribunal to dismiss the claim for reliance loss in its entirety' (emphasis in italics in original in CEF at [117]). Further, insofar as the tribunal relied on a specific case to justify its 'flexible approach' reasoning in support of the Damages Order, this case was only cited once in the respondent's reply post-hearing submissions, under a sub-heading concerning the respondent's claim for expectation loss. This case was not cited in the respondent's own reply post-hearing submissions for the proposition that, if the tribunal was not satisfied as to the state of the respondent's evidence concerning proof of loss. As such, the tribunal's reliance on the case 'had no connection to the issue before the [t]ribunal of what the appropriate award for the respondent's alleged reliance loss should be' (CEF at [118] to [120]).

The Court of Appeal rejected the appellants' application to set aside the part of the award which ordered the respondent to transfer the title to the steel-making plant to the appellants in return for payment ("**Repayment Order**") on the basis that there had been a breach of the fair hearing rule. The court rejected the appellants' submission that they were unable to present their case on the burden of proof and the value of the plant, as the value of the plant was a live issue in the arbitration from the outset (based on the parties' pleadings) (CEF at [97] to [100]). The appellants simply failed to adduce any evidence in this respect. In this regard, the court held that the "no evidence rule" should not be adopted as part of Singapore law as this would run contrary to the policy of minimal curial intervention in arbitral proceedings by serving as an 'impermissible invitation to the courts to reconsider the merits [of] a tribunal's findings of fact as though a setting-aside application were an appeal' (CEF at [101] to [105]).

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

Counsel and arbitrators are generally subject to their own bar rules, such as the Legal Profession (Professional Conduct) Rules 2015, which applies to Singapore lawyers, as well as registered foreign lawyers in Singapore.

Institutions such as the SIAC maintains a Code of Ethics for an Arbitrator (available here) which lists points of conduct relating to appointment, disclosure, confidentiality, fees, bias, etc.

Singapore Institute Of Arbitrators (SIArb) has also published guidelines on party-representative ethics to provide a framework, available here.

The Chartered Institute of Arbitrators (CIArb) has likewise published the Chartered Institute of Arbitrators Code of Professional and Ethical Conduct for Members (available here).

The ICC in its Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration ("**ICC Note**") also provides guidance to arbitral tribunals under Chapter V (Conduct of Participants in the Arbitration) including –

- duties of the parties, tribunal and representatives to abide by highest standards of integrity and honesty (point 65),
- arbitrators to be independent and impartial at all times (point 66),
- parties and tribunals are encouraged to abide by the IBA Guidelines on Party Representation in International Arbitration whenever appropriate (point 67), and
- for arbitrators to not engage in ex parte communications except in limited circumstances (point 68).

Rule 13.1 of the SIAC Rules 2016 also imposes a duty to remain impartial and independent on arbitrators and Rule 13.6 forbids ex-parte communications between parties (or those acting on their behalf) and arbitrators (or candidates for appointment as arbitrators) except in limited circumstances.

31. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

Under S 12(1)(j) of the IAA, the arbitral tribunal has the power to make orders or give directions to any party for,

'(j) enforcing any obligation of confidentiality —

(i) that the parties to an arbitration agreement have agreed to in writing, whether in the arbitration agreement or in any other document;

(ii) under any written law or rule of law; or

(iii) under the rules of arbitration (including the rules of arbitration of an institution or organisation) agreed to or adopted by the parties.'

Section 22 of the IAA provides that any court proceedings under the IAA are to be held in private, unless the court on its own motion or application of a party orders otherwise. Section 23 of the IAA provides for reporting of court proceedings heard in private. This section permits a court to publish information only if all parties to the proceedings agree, or if the publication will not reveal any matter, or identity that any party wishes to remain confidential.

In *CHH v CHI* [2021] 4 SLR 295 at [73], the High Court of Singapore confirmed that 'as a principle of arbitration law at least in Singapore and England, the obligation of confidentiality in arbitration will apply as a default to arbitrations where the parties have not specified expressly the private and/or confidential nature of the arbitration", and where Singapore is the seat of the arbitration, 'confidentiality will apply as a substantive rule of arbitration law … from the common law'.

In a recent case, *CZT v CZU*, [2023] SGHC(I) 11, the Singapore International Commercial Court clarified that an arbitral tribunal's record of deliberations, including discussions between arbitrators and draft awards submitted by the tribunal to an arbitral institution for scrutiny, is protected by the implied obligation of confidentiality under Singapore law. It was held that while this obligation of confidentiality is not absolute, it would be displaced only in the 'rarest of cases' where very serious allegations have been made against the tribunal.

Note however that in *The Republic of India v Deutsche Telekom AG* [2023] SGCA(I) 4, the Singapore Court of Appeal denied India's application for confidentiality restrictions to apply to the enforcement proceedings as 'the confidentiality of the arbitration had been lost' by multiple disclosures of information relating to the arbitration including, inter alia, publication of the interim and final awards on third-party sites, publication of an article in Global Arbitration Review (GAR) expressly identifying India and Deutsche Telekom as parties to the enforcement proceedings in Singapore and LinkedIn posts by the lawyers representing India in Singapore naming India as a party in the enforcement proceedings.

32. How are the costs of arbitration proceedings estimated and allocated?

Costs of arbitration are generally estimated by the administering institution, failing which the Registrar of the SIAC is empowered to assess such costs under s 21(1) of the IAA. Further, s 21(2) of the IAA provides that (2) 'unless the fees of the arbitral tribunal have been fixed by a written agreement or such agreement has provided for determination of the fees by a person or an institution agreed to by the parties, any party to the arbitration may require that the fees be assessed by the Registrar.'

For institutional arbitrations, costs are estimated and allocated by the administering institution. For example, SIAC provides an online schedule of fees (available at https://www.siac.org.sg/fees/siac-schedule-of-fees), which includes updated fee information on case filing fee, administration fees, arbitrator's fees and if applicable, emergency interim relief fees, Arb-Med-Arb fees, appointment fees, authentication and certification service fees, and assessment or taxation fees. The ICC also provides similar information on its website (available online at https://iccwbo.org/dispute-resolution-services/arbitration/costs-and-payments/).

33. Can pre- and post-award interest be included on the principal claim and costs incurred?

Section 20 of the IAA gives complete discretion to the tribunal to impose interest in arbitration proceedings. Pursuant to s 20, an arbitral tribunal has power to award simple or compound interest, whether pre- or post-award.

34. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

Section 19 of the IAA provides that '[a]n award on an arbitration agreement may, by permission of the General Division of the High Court, be enforced in the same manner as a judgment or an order to the same effect and, where permission is so given, judgment may be entered in terms of the award.' Pursuant to s 29(1) of the IAA, a foreign award may be enforced in a court either by action or in the same manner as an award of an arbitrator made in Singapore as enforceable under s 19.

Order 48, Rule 6 of the Singapore Rules of Court, 2021 sets out the procedure for filing an application for permission to enforce an award and/or foreign award. The application can be made without notice and must be

supported by affidavit. The affidavit must exhibit the arbitration agreement and the duly authenticated original award, or in either case, a duly certified copy of the arbitration agreement or record and a duly certified copy of the award are required to be exhibited with this application.

Singapore is a signatory to the New York Convention, which is incorporated by Schedule 2 of the IAA. Accordingly, Article V of the Convention, which provides grounds for refusal of recognition and enforcement of an award applies in Singapore. Article V (1) of the Convention provides the grounds for challenging recognition and enforcement of an award by a party including arbitration agreement is invalid, proper notice of appointment of arbitrator not given to a party, award containing decisions beyond the scope of submissions, etc. Article V(2) allows the competent authority, which is the High Court in Singapore, to refuse recognition and enforcement of an award if the subject matter of difference is not capable of settlement by arbitration under the laws of Singapore, or if recognition and enforcement will be contrary to the public policy of Singapore.

Article 31(2) of the UNICTRAL Model Law requires an award to state reasons, unless the parties have agreed that no reasons are to be given or if the award is on agreed terms. However, an award cannot be refused enforcement on the mere basis of lacking reasons. In CEF, the Singapore Court of Appeal held (at [43]) that an arbitral award cannot be set aside on the basis that it is uncertain, ambiguous or unenforceable.

35. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

The time required for the recognition and enforcement of an arbitral award will vary with the particular facts of each case. It will also depend on whether the award has been challenged to be set aside. As a general guideline, the timeframe for the recognition and enforcement of most arbitral awards in Singapore is between one and three months. If there is no challenge to enforce the award, the proceedings can be concluded fairly quickly. Order 48 rule 6(1) of the Singapore Rules of Court 2021 provides that '[a]n application for permission to enforce an award may be made without notice …'

36. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

The recognition and enforcement of a domestic award is governed by AA, while the IAA governs the recognition and enforcement of a foreign award. However, the provisions and procedure for enforcing both are similar. Section 46 of the AA and s 19 of the IAA both state that an award, with the permission of the General Division of the High Court, may be enforced as a judgment or an order. Under s 29 of the IAA, a foreign award may be enforced in a court either by action or in the same manner as an award made in Singapore which is enforceable under s 19. Pursuant to s 46(3) of the AA, arbitral awards made in non-New York Convention jurisdictions can be enforced in accordance with the procedure for enforcement of a domestic arbitral award.

The enforcement process is a two-stage process. The first stage is a 'mechanistic' one, where the court will determine prima facie whether there exists a valid and binding contract containing an arbitration agreement between the parties (Aloe Vera at [41] and [42]). It is only in the second stage that the court will consider whether the relevant ground for resisting enforcement (whether under the AA or the IAA) has been made out (Aloe Vera at [42], [43] and [47]).

37. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts

Pursuant to s 12(5) of the IAA, an arbitral tribunal is empowered to award 'any remedy or relief that could be ordered by the General Division of the High Court if the dispute had been subject of civil proceedings in the General Division of the High Court', and 'may award simple or compound interest on whole or any part of any sum.'

38. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

Yes, arbitration awards issued in international commercial arbitrations seated in Singapore can be challenged – but not appealed – in the General Division of the High Court. The grounds for challenge are listed under Art 34 of the Model Law and are summarised below.

i. Incapacity of party

ii. Invalidity of the arbitration agreement

iii. Failure to give proper notice of appointment of an arbitrator or of the proceedings

iv. Party was unable to present its case

v. Award deals with a dispute not contemplated by the parties or outside the scope of submission by the parties

vi. Composition of arbitral tribunal was not as per agreement of the parties

vii. Subject matter is not capable of settlement by arbitration as per laws of Singapore

viii. Award conflicts with the public policy of Singapore.

Section 24 of the IAA provides two additional grounds to set aside an award –

i. the making of the award was induced or affected by fraud or corruption; or

ii. 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.

The requirements for an application to set aside an award are set out under Order 34 Rule 5 of the Singapore Rules of Court 2021. The application must be supported by an affidavit setting out the grounds on which it is contended to be set aside and the evidence relied upon by the claimant. The affidavit should also have exhibited to it a copy of the arbitration agreement, the award or any other document relied upon.

The courts in Singapore observe a policy of minimal curial intervention and it has been held that the grounds on which the seat court can set aside an arbitral award are exhaustively prescribed in s 24 of the IAA and Art 34 of the Model Law (Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd [2007] 3 SLR(R) 86 at [59], upheld in COT at [1])

Pursuant to s 49 of the AA, an appeal regarding a question of law can only be made against a domestic award. Such appeal can be made only with the agreement of all parties in the

proceedings or with the permission of the court.[29] Permission of the court to file an appeal is granted only if the court is satisfied if the grounds in s 49(5) of the AA are met.

Footnotes:

[29] Section 49(2), Arbitration Act.

39. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

Where domestic awards are concerned, s 49(2) of the AA states that parties may agree to exclude the jurisdiction of the court to hear appeals against the award. Rule 32.11 of the SIAC Rules and s 49 (2) of the AA were referred to in CIX v. CHY [2021] SGHC 53, where the Singapore High Court noted (at [103]) that the claimant had earlier commenced proceedings to appeal against the arbitral award under the AA, and then decided to discontinue the appeal after the defendant pointed out that by agreeing to arbitrate under the SIAC Rules 2016, the parties had irrevocably waived their rights to any appeal.

In the context of international arbitration, s 19B(4) of the IAA expressly provides that '[t]his section does not affect the right of a person to challenge the award by any available arbitral process of appeal or review or in accordance with the provisions of [the IAA] and the Model Law.'

40. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

In the Singapore Court of Appeal decision in National Oilwell Varco Norway AS (formerly known as Hydralift AS) v Keppel FELS Ltd (KFELS) [2022] SGCA 24, the court held (at [75]) that the courts have the power to enforce an arbitral award in favour of or against a third party not expressly named in the award when there is a misnomer situation. In this case, KFELS commenced arbitration proceedings against Hydralift in 2007. However, Hydralift had ceased to exist following its merger with NOV Norway. The court found that there was a transfer of rights from Hydralift to NOV Norway after the merger and a binding arbitration agreement subsequently existed between NOV Norway and KFELS. The Court of Appeal allowed NOV Norway (instead of Hydralift) to enforce the award against KFELS.

See also COT, another recent decision by the Singapore Court of Appeal, where the court held that a seat court hearing a setting aside application premised on the absence of a binding contract 'need only concern itself with whether such a contract existed' and the court 'need not engage in a comprehensive interpretation exercise as to the terms of the contract' as it would only have to determine such terms on a prima facie purpose

to determine which parties were parties to the contract (COT at [39]). The standard of review undertaken is de novo (COT at [29] and [39]). COT is also explained above in response to Question 12.

41. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

When it was first introduced in 2017, third party funding in Singapore was applicable only to international arbitration proceedings and related court and mediation proceedings. However, with effect from 28 June 2021, the third-party funding framework has been extended to cover domestic arbitration proceedings, court proceedings arising from or connected with domestic arbitration proceedings, certain proceedings in the Singapore International Commercial Court (SICC) and related mediation proceedings.

With effect from 4 May 2022, the framework for conditional fee arrangements in Singapore entered into force. It allows conditional fee arrangements to be entered into between lawyers and clients in certain categories of proceedings, including international and domestic arbitration proceedings and related court and mediation proceedings, as well as certain proceedings in the Singapore International Commercial Court.

42. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

Yes. Section 2(1) of the IAA defines 'arbitral tribunal' to include 'an emergency arbitrator appointed pursuant to the rules of arbitration agreed to or adopted by the parties including the rules of arbitration of an institution or organization' and defines an 'award' as 'a decision of the arbitral tribunal on the substance of the dispute and includes any interim, interlocutory or partial award but excludes any order or direction made under section 12.'

Schedule 1 of the SIAC Rules provides for the process for applying for emergency interim relief to the SIAC Registrar. The ICC Rules also provide for appointment of an Emergency Arbitrator under Article 29 and Schedule V of the rules.

In CVG v. CVH [2022] SGHC 249, the Singapore High Court confirmed that even a foreign emergency arbitrator award is enforceable under the IAA provisions.

43. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

Yes. Under Rule 5.1 of the SIAC Rules 2016, a party can apply for arbitral proceedings to be conducted under Expedited Procedure before constitution of the tribunal where,

- the amount in dispute does not exceed the equivalent amount of S$6,000,000, (such amount representing the aggregate of the claim, counterclaim and any defence of set-off);
- the parties so agree; or
- in cases of exceptional urgency.

The ICC Rules also provide for an expedited procedure at Article 30 (Expedited Procedure) and Appendix VI (Expedited Procedure Rules) for amounts in dispute under US$ 2,000,000 for arbitration agreements concluded on or after 1 March 2017, and US$ 3,000,000 for arbitration agreements concluded on or after 1 January 2021 (Appendix VI, Article 1).

The expedited procedure is used fairly often. According to the SIAC Annual Report 2022, there were 87 applications for expedited procedure in 2022 and that 48 of these applications were allowed.

44. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

SIAC's Annual Report presents numbers on gender diversity in arbitrators. In 2022, the following numbers were published:

'Of the 145 arbitrators appointed by SIAC, 67 (or 46.2%) were female.

Of the 37 members of SIAC's Court of Arbitration, 10 (or 27%) are women.

Women constitute 63% of SIAC's Management and Secretariat.'

(See SIAC Annual Report, 2022 available here, at pg. 28)

The Annual Report also includes information on the origin of arbitrators appointed by SIAC. Arbitrators appointed by SIAC in 2022 included arbitrators from

Australia, Belgium, Canada, China, Denmark, France, Germany, Hong Kong SAR, India, Indonesia, Ireland, Israel, Lebanon, Malaysia, Mauritius, the Netherlands, New Zealand, Nigeria, Philippines, Singapore, South Korea, Spain, Switzerland, the United Kingdom, the United States of America, Taiwan, Turkey and Vietnam.

In the ICC's Centenary Declaration on Dispute Prevention and Resolution issued in March 2023, the ICC pledged to 'build on ground-breaking work on diversity, equity and inclusion in all aspects of dispute prevention and resolution, including all stakeholders in the process'.

Further, in November 2022, the ICC Court included language in all letters to parties and co-arbitrators encouraging them, when nominating arbitrators to consider diversity, broadly defined by, but not limited to race, ethnicity, culture, generation and gender. The same language has been added as of 1 January 2022 to the Note to National Committees and Groups on the proposal of Arbitrators.

45. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

No. However, in CZD[30], the Singapore High Court dismissed a defendant's application to set aside an order granting the claimant permission to enforce an arbitral award issued in arbitration proceedings seated in China. Amongst other points raised, the defendant contended that the arbitral award should not be enforced because the award had been fully and/or effectively satisfied in enforcement proceedings commenced in China. The court found (at [44] to [45]) that that this ground was a 'non-starter' as it is not a recognised ground of challenge under s 31 of the IAA, which provides an exhaustive list of grounds for refusal of enforcement.

Footnote:

[30] CZD – CZD v CZE [2023] SGHC 86

46. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

Section 24(b) of the IAA provides an award may be set aside if 'the making of the award was induced or affected by fraud or corruption'.

In Lao Holdings NV v Government of the Lao People's Democratic Republic and another matter [2021] 5 SLR 228, the SICC found (at [153]) that arbitral tribunals have a duty to take on a proactive role and consider corruption not just where there are allegations of corruption in the dispute between the parties, but also where the evidence indicates possible corruption. Parties therefore cannot agree to prevent the arbitral tribunal from reviewing and admitting evidence of corruption:

'In each of the cited cases, the court or tribunal recognised that arbitral tribunals and particularly arbitral tribunals dealing with investor-State disputes, have a duty to consider corruption, which includes illegal conduct, bribery and fraud. **That duty arises not only where the arbitral tribunal has to deal with allegations of corruption in the dispute between the parties, but also where the evidence in the case indicates possible corruption**. This shows that, as with national courts, arbitral tribunals have a pro-active role and cannot simply ignore evidence of corruption. **Where, therefore, a party seeks to put before an arbitral tribunal evidence of corruption, we are of the clear view that no agreement between the parties can prevent the arbitral tribunal from reviewing and, where appropriate, admitting that evidence.** This is consistent with the commentaries cited by GOL and with the public duty which, we find, applies as much to arbitrators as it does to judges. Otherwise parties could enter into procedural agreements deliberately or unintentionally precluding evidence of corruption and arbitral tribunals might make awards supporting or enforcing that corruption.'

The SICC also considered parties' arguments relating to various standards of proof for corruption and fraud including the balance of probabilities approach, clear and convincing evidence approach and the "red flags" approach. The Court (at [400]) upheld the arbitral tribunal's decision that illegality required 'clear and convincing evidence' and adopted a standard of 'balance of probabilities' for bad faith allegations. Further, the party alleging corruption bears the burden of proof.

In Bloomberry Resorts and Hotels Inc and another v Global Gaming Philippines LLC and another [2021] 1 SLR 1045, the Singapore Court of Appeal held (at [82]) that no exceptions are made even if new evidence of fraud or corruption emerges after the expiry of the 3-month time limit imposed by Article 34(3) of the UNCITRAL Model Law to apply to set aside an award.

47. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

Various measures have been adopted by arbitral institutions to ensure efficiency in arbitral proceedings, in response to restrictions imposed during the COVID-19 pandemic. Due to travel and other constraints, parties have used different modes to conduct hearings, using platforms such as Zoom, and Microsoft Teams for virtual hearings.

On its FAQ page, SIAC dealt with the possibility of delays in payment of deposits in light of COVID-19 and requested parties to make a formal request to SIAC for an extension of time in such cases. SIAC also provided for similar extension of time requests if parties are unable to meet timelines for submissions in light of the pandemic. For conduct of hearings during the pandemic, in light of travel restrictions, SIAC mentions on their FAQ page that

'Where in-person hearings are impossible or impracticable, parties should discuss with the tribunal other options to an in-person hearing, such as proceeding with the hearing virtually or via teleconferencing. Maxwell Chambers offers hybrid and virtual hearing services, which may be suitable for parties.' 'For less complex cases, the parties may consider adopting a documents-only procedure in lieu of a hearing. Parties should discuss such alternative procedures with the tribunal.' (See SIAC FAQs here)

The ICC Court of Arbitration issued a COVID-19 guidance note outlining measures to assist parties with mitigating the effects of the COVID-19 pandemic on arbitral proceedings (available here).

CIArb also published a Guidance Note on Remote Dispute Resolution proceedings to assist parties with virtual hearings. (Guidance Note available here)

48. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

SIAC, in August 2020, released a guide on 'Taking your arbitration remote', which is intended to assist users when considering conducting arbitral proceedings via audio conference, videoconference, or other nonphysical means of communication. (Available here)

ICC has released a Virtual and Hybrid Hearing Solution to offer technical support for a customized, fully virtual and hybrid hearing solution s for hearings in ICC administered cases and for cases administered by other arbitral institutions or ad-hoc cases. (Available here)

ICC has also released the 'ICC Checklist for a Protocol on Virtual Hearings and Suggested Clauses for Cyber-Protocols and Procedural Orders Dealing with the Organisation of Virtual Hearings', guidance that is found at section VII(C) of the ICC's Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration, dated 1 January 2021 (Available here).

49. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

There have not been any recent disputes relating to climate change and/or human rights in Singapore. However, Singapore has taken measures to reduce the impact of climate change. The Singapore Exchange (SGX) has introduced, with effect from 2022, climate reporting requirements on a 'comply or explain' basis for all listed companies from this year. (See news release here) In its recent budget, Singapore announced a large increase in its carbon tax from $5 per tonne now to $25 in 2024, $45 in 2026 and $50-80 in 2030 (See news release here).

50. Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent decisions in your country considering the impact of sanctions on international arbitration proceedings?

There is no recent case law discussing international economic sanctions as part of international public policy in Singapore or the impact of sanctions on international arbitration proceedings, although the Singapore Court of Appeal recently held that a sanctions clause in a letter of credit has to be strictly and objectively construed, and further held that a bank's concern about a potential adverse finding by the US Office of Foreign Assets Control was not sufficient to excuse payment on an otherwise compliant presentation (*Kuvera Resources Pte Ltd v JPMorgan Chase Bank, N.A.* [2023] SGCA 28).

International public policy was generally discussed in the

Singapore Court of Appeal decision of *Poh Soon Kiat v Desert Palace Inc (trading as Caesars Palace)* [2010] 1 SLR 1129. In this case, the Singapore Court of Appeal took the view that statutory public policy is 'superior' to international public policy, observing as follows at [113]:

'Ex hypothesi, the statutory public policy expressed in s 5(2) of the CLA [Civil Law Act – i.e., the prohibition of legal actions in relation to gaming or wagering] is superior to what may be called the "higher" international public policy at common law, i.e., the "higher standard of public policy in operation when a forum court is faced with a foreign judgment" (see Burswood Nominees ([10] supra) at [32]). This is because the higher international public policy is only common law public policy. The position would be different if the court's refusal to enforce a foreign gambling debt, in whatever form or guise that debt takes (including the debt as converted into a foreign judgment), is based on domestic public policy that has no basis in statute; in such circumstances, the court would be entitled to prefer the higher international common law public policy to its domestic common law public policy. But, this is not the case where s 5(2) of the CLA is concerned. In a contest between the higher international public policy at common law and statutory public policy, the latter must prevail.'

51. Has your country implemented any rules or regulations regarding the use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration?

No, not in the context of international arbitration. However, the Monetary Authority of Singapore (MAS) has issued the "Principles to Promote Fairness, Ethics, Accountability and Transparency (FEAT) in the Use of Artificial Intelligence and Data Analytics in Singapore's Financial Sector" in decision-making in the provision of financial products and services. (Available here)

Contributors

CHOU Sean Yu
Deputy Managing Partner; Head – Litigation & Dispute Resolution Group; Head – Banking & Financial Disputes; Partner – International Arbitration, Financial Services Regulatory and Malaysia Practices
seanyu.chou@wongpartnership.com

KOH Swee Yen, Senior Counsel
Head – International Arbitration; Partner – Commercial & Corporate Disputes
sweeyen.koh@wongpartnership.com

LIM Wei Lee
Deputy Head – Banking & Financial Disputes; Partner - International Arbitration
weilee.lim@wongpartnership.com

Alessa Pang
Partner – Commercial & Corporate Disputes
alessa.pang@wongpartnership.com