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IBA ARBITRATION COMMITTEE

Arbitration Guide SINGAPORE

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I. Background

(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

The use of arbitration in Singapore is prevalent and continues to increase. For example, the Singapore International Arbitration Centre (SIAC) dealt with 1,080 new cases in 2020, representing a 125% increase from the 479 cases filed in 2019 and a 169% increase from the 402 cases filed in 2018. The first quarter of 2023 alone saw 332 new cases filed with the SIAC. In the 2021 International Arbitration Survey conducted by White and Case LLC and the Queen Mary University of London, Singapore tied in first place with London as the most preferred seat of arbitration in the world, ahead of Hong Kong, Paris and Geneva.

This has, to a large extent, been a function of the Government's policy to develop Singapore as an international arbitration centre. The legislative framework is periodically reviewed and amended to strengthen support of international arbitration and to keep pace with developments in international arbitration. An arbitration facility centre (Maxwell Chambers) was launched in 2010 with the Government's support, and is now a market-leading international dispute resolution hub, housing offices of ADR institutions such as the ICC Permanent Court of Arbitration and the WIPO Arbitration and Mediation Center.

The perception of Singapore as a neutral forum is generally seen as a principal advantage to arbitrating in Singapore. Parties appreciate the ease of enforcement of arbitral awards under the New York Convention. Singapore's strict position favouring confidentiality in arbitration is also frequently an important consideration.

The Singapore courts are consistently ranked among the best judicial systems in Asia and the judiciary has also adopted a policy of minimal curial intervention with respect to arbitration.

(ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?

Most arbitrations in Singapore are conducted under institutional rules, with the SIAC Rules, which are now in their sixth edition, being the most popular choice, and the ICC Rules being the most-favoured alternative. Specialised industries may choose industry-specific rules, for example the Singapore Chamber of Maritime Arbitration Rules. Where ad hoc arbitration is concerned, parties typically choose the UNCITRAL Arbitration Rules.

A substantial portion of arbitrations in Singapore relate to international disputes and that continues to steadily increase. For example, of the arbitrations referred to the SIAC in 2022, 313 were international arbitrations, compared to 71 in 2008.

(iii) What types of disputes are typically arbitrated?

Singapore arbitrations typically involve commercial and investment disputes. In recent years, more complex disputes involving elements of international law have also been arbitrated in Singapore. In that regard, branches of leading international arbitral institutions such as ICSID, ICIDR, ICC, WIPO and the Permanent Court of Arbitration have established offices in Singapore.

(iv) How long do arbitral proceedings usually last in your country?

Arbitral proceedings in Singapore generally take about one to two years to conclude. According to a study by the SIAC in 2016, the mean duration of cases at the SIAC is 13.8 months, and the median duration is 11.7 months. The proceedings could well extend much longer, depending on the complexity and circumstances of the case. Conversely, the proceedings could be concluded fairly quickly if parties agreed to a documents-only hearing or if the expedited procedure of the SIAC Rules is applied. Amendments to the SIAC Rules in 2016 also introduced a procedure for the early dismissal of a claim or a defence. This is intended to offer parties an avenue for an expeditious disposal of a claim or a defence that is manifestly without merit or outside the tribunal's jurisdiction.

(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

Neither the Arbitration Act (AA) nor the International Arbitration Act (IAA) provides any nationality restrictions on the appointment of arbitrators.

Parties may be represented by any person of their choice; there is no requirement that that person even be a lawyer. Foreign nationals may act as counsel in Singapore arbitrations. The Singapore Legal Profession Act was amended in 2004 to expressly permit foreign lawyers to represent a party in Singapore arbitrations and give advice in relation thereto, even if the substantive law of the dispute is Singapore law.

However, should a party to an arbitration wish to make an arbitration-related court application, it must retain Singapore counsel for that purpose. The Singapore courts may grant the ad hoc admission of King's Counsel or lawyer of equivalent distinction, but will only do so if considered reasonable in the circumstances of the case.

II. Arbitration Laws

(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?

Singapore has a dual-track regime, with the AA governing 'domestic' arbitrations and the IAA governing international arbitrations.

The AA is commonly cited as the governing legislation for 'domestic' arbitrations but, to be more precise, the AA applies to any arbitration where the place of arbitration is Singapore and Part II of the IAA does not apply.

The IAA applies to international arbitrations as well as non-international arbitrations where parties have agreed so in writing. Under the IAA, an arbitration is 'international' if:

- (a) at least one of the parties has its place of business in any State other than Singapore at the time the arbitration agreement was concluded; or
- (b) the agreed place of arbitration is situated outside the State in which the parties have their place of business; or
- (c) any place where a substantial part of the obligation of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected is situated outside the State in which the parties have their place of business; or
- (d) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

Parties may select the applicable regime (IAA or AA) by agreement.

The IAA gives the UNCITRAL Model Law (1985) the force of law in Singapore; Singapore has not yet adopted wholesale the 2006 amendments to the Model Law. The IAA however provides some modifications to the Model Law (1985); for example:

- (a) Chapter VIII of the Model Law is excluded (to avoid any inconsistency with Part III of the IAA which deals with enforcement of New York Convention awards);
- (b) if the number of arbitrators is not determined by the parties, there shall be a single arbitrator;
- (c) in an arbitration with two parties and three arbitrators, each party shall appoint one arbitrator, and the parties shall by agreement appoint the third arbitrator;
- (d) it contains a prescribed procedure for appointment of arbitrators in an arbitration with three or more parties and three arbitrators;
- (e) it expands the extent to which appeals against jurisdictional rulings under Article 16 of the Model Law may be brought (i.e. to the Court of Appeal if the aggrieved party has obtained the requisite leave of court) and permits recourse against negative rulings on jurisdiction;

- (f) it adds provisions relating to appointment of conciliators; and
- (g) it adds two further grounds (additional to those set out in Article 34(2) of the Model Law) for the setting aside of an award.

(ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?

The main difference between the IAA and the AA relates to the degree of court intervention in the arbitral process. For example, parties may appeal to a court on a question of law arising out of an AA arbitration award; such appeals are not permitted under the IAA. Under the AA, parties may also apply to the court for determination of a question of law arising in the course of arbitration proceedings which substantially affects the rights of one or more parties; such applications are not permitted under the IAA.

(iii) What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?

Singapore has adopted the New York Convention, subject to the reciprocity reservation. It has also ratified the ICSID Convention. Singapore has no bilateral arrangements for the recognition of foreign arbitral awards, although it has entered into several bilateral trade and investment agreements in which disputes are referred to arbitration.

(iv) Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

In general, arbitral tribunals are required to apply the parties' choice of law. In the absence of such choice of law, the tribunal must apply the law determined by 'the conflict of laws rules which it considers applicable'.

Under Singapore law, the governing law of the contract is determined in three stages:

- (a) 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. The exception is narrowly construed.
- (b) Implied choice: In the absence of an express choice, the court may infer a choice from the contract and the surrounding circumstances at the time of the making of the contract.
- (c) 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).

III. Arbitration Agreements

(i) Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?

Under both the IAA and the AA, an arbitration agreement may be entered into before or after a dispute has arisen. The arbitration agreement may be concluded by any means (orally, by conduct or otherwise) but must be in writing, a requirement that is satisfied if its content is recorded in any form. There is no requirement for specific words or form to constitute an arbitration agreement, but the wording used must express a clear and unequivocal intention to arbitrate. Mere silence, in and of itself, will not amount to an agreement to arbitrate.

In addition, an arbitration agreement is deemed by law 'where in any arbitral or legal proceedings, a party asserts the existence of an arbitration agreement in a pleading, statement of case or any other document in circumstances in which the assertion calls for a reply and the assertion is not denied' under both the IAA and the AA.

(ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?

The Singapore courts will generally give full effect to the parties' arbitration agreement unless such choice offends the law (for example, where the agreement is contrary to public policy, or procured by fraud).

(iii) Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?

Multi-tiered dispute resolution clauses are not uncommon in Singapore and are generally held to be enforceable.

Non-compliance with the preliminary tiers may impact the validity of any arbitration commenced. Depending on the wording and intent of the clause, it could constitute a condition precedent to the commencement of arbitration, a breach of which may render the arbitration void for want of jurisdiction. Recent decisions of the Court of Appeal however suggest that the enforceability of procedural pre-conditions is an issue of admissibility instead of jurisdiction.

(iv) What are the requirements for a valid multi-party arbitration agreement?

There are no special requirements for a valid multi-party arbitration agreement – the same requirements described in section III(i) above apply.

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.

(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?

Unilateral clauses that bind one party to arbitration at the option of the other party are generally upheld to be valid and enforceable.

(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?

Non-signatories may also be considered parties to an arbitration agreement through the application of legal principles such as an assumption of rights and/or liabilities to a contract with an arbitration clause (e.g., by assignment or novation), where the signatory is deemed to be an agent of the third party, where the corporate veil is pierced on the basis of the alter ego principle, or by operation of the doctrine of estoppel. Singapore law does not recognize the 'group of companies' doctrine.

In addition, a third party may be treated as a party to the arbitration agreement where section 9 of the Contracts (Rights of Third Parties) Act applies.

Generally, the Singapore courts will only find a non-signatory bound by an arbitration agreement where consent can be found on the facts.

(vii) How do the courts in the jurisdiction determine the law governing the arbitration agreement?

The court will apply a three-stage test to determine the applicable law of an arbitration agreement:

- (a) If the parties have expressly made a choice of law governing the arbitration agreement, that law should apply.
- (b) In the absence of an express choice, the court will look to whether parties had made an implied choice of the law governing the arbitration agreement, with the starting point for determining the implied choice being the law of the contract.
- (c) If neither an express choice nor an implied choice can be discerned, the court will apply the system of law with which the arbitration agreement has its closest and most real connection.

(viii) Do courts in your jurisdiction distinguish between the seat (or legal place) of the arbitration and the venue of meetings/hearings?

Yes.

The seat of an arbitration is essential to arbitration law. The arbitration will be regarded as situated in the state or territory of the seat, and the choice of seat also identifies the state or territory whose laws will govern the arbitral process, ie, the curial law of the arbitration. The seat will also be considered to be the jurisdiction in which the arbitral award is 'made' for the purposes of the New York Convention. Where parties specify only one geographical location in an arbitration agreement, the court would generally construe that as a reference to the parties' choice of seat.

The venue(s) where an arbitration might be held has far less significance. The venue is simply the physical place where the arbitral tribunal will have to hold its hearings and meetings.

(ix) Are blockchain- and NFT-related disputes arbitrable in your jurisdiction?

Yes. In a recent decision, the court ordered a stay of litigation by an investor against a cryptocurrency financial services provider in favour of arbitration.

(x) Are there circumstances in which courts find that a valid arbitration agreement has become inoperable?

A valid arbitration agreement can become inoperative where it ceases to have contractual effect under the general law of contract (for example, if it is discharged by breach, by agreement, or by reason of waiver, estoppel, election or abandonment).

The court has found in a previous decision that the arbitration agreement (in that case, an agreement for mediation-arbitration in accordance with the SMC-SIAC Med-Arb Procedure) was rendered inoperative because one party had committed a repudiatory breach of the arbitration agreement between the parties by refusing to participate in the inter-related mediation, which was accepted by the other party.

IV. Arbitrability and Jurisdiction

(i) Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?

Both the IAA and AA recognize that any dispute is generally arbitrable in Singapore, unless an arbitration of such dispute is contrary to public policy, which is not limited to the public policy of Singapore but also extends to foreign public policy where this arises in connection with essential elements of an arbitration agreement.

There is no exhaustive list of non-arbitrable matters; but some guidance can be drawn from a court decision which held that issues which 'may have public interest elements' may not be arbitrable, such as citizenship or legitimacy of marriage, grants of statutory licenses, or insolvency-related claims such as winding-up of companies and bankruptcies of debtors. The legislation was specifically amended to clarify that intellectual property rights disputes may be arbitrable.

The lack of arbitrability is a matter of jurisdiction.

(ii) What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?

Parties may apply to stay court proceedings in Singapore which are commenced in breach of an arbitration agreement. If no further step has been taken in those proceedings for a period of not less than two years after an order staying the proceedings has been made, the court may discontinue the proceedings entirely. Conversely, if the parties do not progress with the arbitration, any party may apply to 'lift' the stay and revive the court proceedings.

The court may impose terms and conditions as it thinks fit when granting a stay of court proceedings. However, the Singapore courts have expressed that this discretionary power will be exercised judiciously and conditions imposed only where necessary in the interests of justice.

Under the IAA, it is mandatory for the court to grant a stay if the conditions set out therein are met, unless the court is satisfied that the arbitration agreement does not exist or is 'null and void, inoperative or incapable of being performed'.

In comparison, the court's power to grant a stay under the AA is discretionary. However, the Singapore courts will ordinarily exercise that discretion in favour of granting a stay.

There is no time limit to make an application for a stay of court proceedings. However, the putative applicant for a stay of proceedings must be careful to make the application before delivering any pleading or taking any step in the court proceedings. Such a step, if taken, could be construed as a waiver of the right to arbitrate.

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

(iii) Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?

The competence-competence doctrine applies to all Singapore-seated arbitrations. The tribunal has full power to decide on its own jurisdiction and on the existence or validity of the arbitration agreement.

Participation in the proceedings on the issue of jurisdiction per se does not constitute a submission to the tribunal's jurisdiction or consent to an ad hoc submission to arbitrate. A dissatisfied party may appeal against a tribunal's finding of jurisdiction (whether positive or negative) to the General Division of the High Court within 30 days from receipt of the tribunal's ruling. The courts undertake a *de novo* review of the tribunal's decision on jurisdiction, but generally interfere with the tribunal's findings only in exceptional circumstances.

V. Selection of Arbitrators

(i) How are arbitrators selected? Do courts play a role?

Parties are free to choose the applicable procedure for the appointment of arbitrators, as well as the number of arbitrators on the tribunal.

In the absence of an agreement, the AA and IAA provide for default appointment of a single arbitrator.

Under both the IAA and AA:

- where parties have agreed on a sole arbitrator or the default of a sole arbitrator applies, parties are to agree to the joint nomination of the sole arbitrator; failing which, the arbitrator will be appointed by the President of the Court of Arbitration of SIAC.
- where two parties have agreed on a three-member tribunal, each party is to appoint one arbitrator, and the parties shall by agreement appoint the third arbitrator. If a party fails to do so, the arbitrator will be appointed by the President of the Court of Arbitration of SIAC. If parties fail to agree on the appointment of the third arbitrator, or if the two nominated arbitrators are unable to reach agreement on the third arbitrator in accordance with the agreed procedure, the third arbitrator will be appointed by the President of the Court of Arbitration of SIAC.

Under the IAA, where three or more parties have agreed on a three-member tribunal, the claimant (or all the claimants by agreement) and the respondent (or all the respondents by agreement) must each appoint one arbitrator, and the two arbitrators appointed must by agreement appoint the third arbitrator. If the claimant(s) or respondent(s) fail to appoint an arbitrator or fail to inform the other side of such appointment within the time specified, the President of the Court of Arbitration of the SIAC must, upon the request of any party, appoint all three arbitrators and designate the presiding arbitrator.

No appeal lies against any decision by the President of the Court of Arbitration of SIAC on the appointment of arbitrators.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

At the appointment stage, the arbitrator is obliged to disclose to the parties and/or to the relevant appointing authority (as the case may be) any circumstance that may give rise to justifiable doubts as to his or her independence as soon as reasonably practicable. This obligation is a continuing one; the arbitrator must disclose to the parties and/or any relevant appointing authority should any circumstance of similar nature arise in the course of the arbitration.

There are two main grounds of challenge under the AA and IAA:

- (a) circumstances that give rise to justifiable doubts as to the arbitrator's impartiality or independence; and/or
- (b) the arbitrator does not possess the qualifications agreed to by the parties.

In the absence of an agreed challenge procedure by the parties, the procedure in the AA or IAA applies.

The procedures in the AA and IAA are similar:

- within 15 days of becoming aware of any circumstance that gives rise to justifiable doubts as to the arbitrator's independence or qualifications, a party shall send a written statement of the ground(s) for challenge to the tribunal;
- the tribunal shall decide on the challenge, unless the challenged arbitrator withdraws from office or the other party agrees to the challenge. However, if an arbitrator withdraws from office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of validity of the grounds for the challenge;
- if the tribunal rejects the challenge, the aggrieved party may, within 30 days of the tribunal's decision, apply to court to decide on the challenge. The court may make such order as it deems fit and the court's decision is not appealable; and
- pending the court's decision, the arbitration proceedings may continue and the arbitrator may even make an award.

A party may also request for an arbitrator to be removed upon death or resignation of an arbitrator, or where the arbitrator is physically and/or mentally incapable of conducting the proceedings or there are justifiable doubts on the same, or where the arbitrator has failed to fulfil his or her proper functions as an arbitrator or failed to use all reasonable despatch in conducting the proceedings or making an award, or where substantial injustice has been or will be caused to that party.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

There are no nationality restrictions on the appointment of arbitrators.

Parties are free to agree on the arbitrators; neither the AA nor IAA provides any nationality restrictions on the appointment of arbitrators.

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

Some institutions such as the SIAC have issued a Code of Ethics for arbitrators; SIAC-appointed arbitrators are required to confirm their agreement to abide by the Code.

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

Arbitrators in Singapore frequently refer to the IBA Guidelines on Conflicts of Interest in International Arbitration for guidance. In addition, as mentioned above, the SIAC has published a Code of Ethics for arbitrators, which also addresses the issue.

VI. Interim Measures and Emergency Arbitration

(i) Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?

Arbitrators generally have extensive powers to grant interim relief.

Under both the IAA and AA, arbitrators can make orders or give directions to any party for security for costs, discovery of documents and discovery of facts, giving of evidence by affidavit, preservation and interim custody of any evidence for the purposes of the proceedings, or interim custody or sale of property which is part of the subject matter of the dispute.

Under the IAA, arbitrators can also make orders or give directions to any party for 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, or issue an interim injunction or any other interim measure. Under the AA, such matters are in the court's purview, and an arbitrator does not generally have the power to make such orders or directions unless parties agree that the tribunal may exercise such powers.

Parties and the tribunal are free to agree or decide on the appropriate procedure and timelines in applications for interim measures; neither the IAA nor the AA provides an applicable procedure.

There is no specific requirement as to the form of the tribunal's order or award of the interim relief. The arbitral tribunal's interim order or award may be enforced through the Singapore courts.

(ii) Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?

The Singapore courts are empowered to grant the same interim reliefs as those available to the arbitral tribunal under both the IAA and AA; note, however, that this specifically excludes the powers to grant security for costs and discovery of documents and facts. The court can grant interim relief both before and after constitution of the tribunal.

Under the IAA, the Singapore courts may grant interim relief in aid of arbitration, 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. The court will, however, grant interim relief only where the arbitral tribunal is unable to or in exceptional cases of urgency, and insofar as necessary for the preservation of evidence or assets. If the matter is not one of urgency, an application to court for interim relief can be brought only with the permission of the arbitral tribunal or the agreement in writing of the other parties. The Court of Appeal has held that parties should, when seeking interim relief, turn to the arbitral tribunal as the first port of call.

Under both the IAA and AA, any court-ordered provisional relief will cease to have effect when the arbitral tribunal makes an order which expressly relates to the whole or part of the court's interim order.

(iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?

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.

Under the AA and IAA, any party to an arbitration may apply to the courts of Singapore for an order for the preservation and interim custody of any evidence for the purposes of the proceedings. Applications may also be made under the IAA and AA for an order to attend or an order to produce documents. Such orders, if granted by the court, compel the attendance before an arbitral tribunal of a witness wherever he/she may be within Singapore, to give evidence or produce specified documents. However, a party cannot be compelled to produce documents which he/she could not be compelled to produce in a civil trial of the action (for example, where the documents are privileged).

(iv) Are decisions by emergency arbitrators enforceable in your country?

Yes. The definition of 'arbitral tribunal' in both the AA and IAA include emergency arbitrators, and decisions rendered by them are enforceable.

(v) What is the approach in your country to anti-suit injunctions or injunctions by arbitrators preventing parties from initiating litigation proceedings?

Anti-suit injunctions may be obtained from the courts of Singapore in the case of a breach of an arbitration agreement or an exclusive jurisdiction clause. The courts will ordinarily grant an anti-suit injunction if the party sought to be restrained is amenable to the jurisdiction of the Singapore courts, if Singapore is the natural forum for the resolution of the dispute between the parties, and if institution of litigation proceedings is in breach of an arbitration agreement, unless the party sought to be restrained can demonstrate 'strong reasons' why anti-suit relief should not be granted.

Under the IAA, arbitrators can make orders or give directions to any party for an interim injunction or any other interim measure, which would include injunctions by arbitrators preventing parties from initiating litigation proceedings. Under the AA, however, an arbitrator does not generally have the power to grant an interim injunction unless parties agree that the tribunal may exercise such powers.

(vi) Do courts provide assistance in aid of foreign-seated arbitrations, including for disclosure of documents?

Under the IAA, the Singapore courts may grant interim relief in aid of arbitration, 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. However, this specifically excludes the powers to grant security for costs and discovery of documents and facts.

VII. Disclosure/Discovery

(i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?

The tribunal has broad discretion to determine the relevance, materiality and admissibility of all evidence as it sees fit. The common law rules of evidence and the Evidence Act of Singapore do not apply to Singapore arbitrations.

Generally, in dealing with requests for documents, Singapore arbitrators commonly refer to the IBA Rules on Evidence. Extensive general discovery with full lists and disclosure of documents is usually discouraged.

The tribunal has no jurisdiction over and accordingly no power to order discovery from non-parties. However, parties can apply to the Singapore courts for assistance in taking evidence from non-parties.

(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?

There are no limits to the permissible scope of disclosure under the IAA or AA. As mentioned above, the tribunal has broad discretion to determine the relevance, materiality and admissibility of all evidence as it sees fit.

(iii) Are there special rules for handling electronically stored information?

There are no special rules on control procedures for handling data and inspection. This is generally left to the parties' agreement. Tribunals commonly refer to the IBA Rules on Evidence, as well as guides issued by institutions such as the CIARB Protocol for E-Disclosure in International Arbitration.

VIII. Confidentiality

(i) Are arbitrations confidential? What are the rules regarding confidentiality?

Singapore law implies a general obligation of confidentiality into all Singapore arbitrations.

Parties are under an implied undertaking not to use documents disclosed for any purpose other than the dispute or arbitration proceedings in which they were obtained. Disclosure or use of such documents can only take place with consent of the other party or by order of court where it is in the interests of justice or reasonably necessary. Under the IAA, the arbitral tribunal has the power to make orders or give directions to enforce any obligation of confidentiality.

The IAA and AA also contain provisions to safeguard confidentiality in arbitration-related court proceedings; for example, parties can apply for proceedings to be heard in camera and for the court file to be sealed from public access.

(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?

The IAA empowers the tribunal to make orders to enforce any obligation of confidentiality that parties have agreed to in writing, under any written law, or under the applicable arbitration rules.

(iii) Are there any provisions in your arbitration law as to rules of privilege?

There are no specific provisions in Singapore law as to the application of rules of privilege in arbitrations. However, tribunals in Singapore arbitrations commonly refer to the IBA Rules on Evidence, which addresses the issue of privilege.

IX. Evidence and Hearings

- (i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?**

In general, it is common that parties and tribunals in Singapore arbitrations refer to the IBA Rules on Evidence, with discretion to depart from them as appropriate in the circumstances of the case.

- (ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?**

There are no limits to the tribunal's discretion to govern the hearings as it sees fit, subject only to adherence to principles of natural justice and the parties' agreed arbitral procedure. However, unless the parties have agreed to a documents-only arbitration, the tribunal must hold hearings (at the appropriate stage) if any party requests for a hearing.

- (iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?**

Witness evidence is usually presented in written form as signed statements and oral direct examinations used only to supplement the written statement where necessary. Any party may request that a witness who has provided written testimony attend for oral examination, subject to the tribunal's discretion to allow, refuse, or limit the appearance of witnesses. If a witness fails to attend a hearing for oral examination, the tribunal may place such weight on the written testimony as it thinks fit, and can even disregard or exclude it altogether.

Any witness who gives oral evidence may be questioned by each of the parties or their representatives and the tribunal in such a manner as the tribunal shall determine. At the hearing, only further evidence that has not been given in the written statements will be presented orally by way of direct examination.

Tribunals may request that parties give notice of the identity of witnesses they intend to produce, the subject matter of each witness' testimony and its relevance to the issues ahead of the hearing. The tribunal will also usually request that parties agree on a schedule of witnesses for the hearing.

As Singapore is a common law jurisdiction, the process is generally (but not always) adversarial in nature and party-driven, with cross-examination of witnesses. The tribunal may alternatively adopt an inquisitorial process if it thinks fit, unless the parties have agreed otherwise.

- (iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?**

As mentioned above, strict rules of evidence do not apply in Singapore arbitrations. Any person may present evidence as a witness, subject to the tribunal's discretion to allow, refuse, or limit the evidence.

There are no specific rules or requirements on the form of witness statements, nor any rules on oaths or affirmations by the witness. It is common, however, for written witness statements to include an affirmation of the truth of the witness statement, the signature of the witness and a record of the date and place the statement was signed.

Under the IAA and AA, the tribunal has the power to administer oaths or take affirmations of the parties and witnesses.

- (v) Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative, director or employee) and the testimony of unrelated witnesses?**

There is, in general, no difference between the testimony of a witness related to one of the parties and the testimony of unrelated witnesses. It is a matter for the tribunal's assessment of the appropriate weight to be placed on the witness' testimony, bearing in mind the witness' relationship with the party.

(vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?

Expert testimony is typically presented in the same manner as factual witnesses, although witness conferencing is commonly employed where appropriate in the circumstances of the case. The tribunal may also order party-appointed experts to meet and confer on the issues in dispute prior to the hearing.

There are no formal requirements as regards impartiality of expert witnesses, but the party-appointed expert is generally expected to be independent from the parties, their legal advisors and the tribunal. The expert must disclose any relationship (prior or existing) with a party. Failure to disclose may form the basis for a party to challenge the impartiality of the expert and result in the tribunal placing less weight on (or even disregarding) the expert's evidence.

There are no specific rules on the formalities required, but the expert's statement usually includes a description of the instructions pursuant to which he/she is providing the expert opinion, a statement of independence, a statement of the facts or documents on which he/she is basing the expert opinion, an affirmation of his/her genuine belief in the views expressed in the expert report, the signature of the expert and a record of the date and place the statement was signed.

(vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?

Unless the parties otherwise agree, the tribunal may appoint experts to report on specific issues determined by the tribunal. There is no requirement that experts be selected from a particular list, in the absence of any agreement by the parties.

It is not common for Singapore tribunals to appoint experts. In keeping with the adversarial approach usually adopted in Singapore arbitrations, the appointment of experts is more commonly party-driven. Parties will usually either appoint their own respective experts or, somewhat less frequently, agree to the joint appointment of a single expert.

(viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?

Witness conferencing is used in Singapore arbitrations where considered appropriate by the parties and the tribunal, and typically where expert evidence is concerned. The questioning of the expert witnesses is led by the tribunal, followed by examination from counsel if considered necessary.

(ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?

The use of arbitral secretaries is common in Singapore arbitrations.

The SIAC has issued a Practice Note on the appointment of administrative secretaries by tribunals, which makes clear that no administrative secretary may be appointed without the consent of all parties to the arbitration. In cases where the amount in dispute is \$15,000,000 or above at the time of the request for the appointment of the administrative secretary, the tribunal may agree with the parties that both the fees (which shall not exceed \$250 per hour) and reasonable expenses of the administrative secretary shall be borne by the parties.

(x) Are there any ethical codes or other professional standards applicable to counsel and arbitrators conducting proceedings in your jurisdiction?

Counsel and arbitrators are generally subject to their own bar rules. In Singapore, the PCR applies to Singapore lawyers and registered foreign lawyers.

The Singapore Institute of Arbitrators (SI Arb) has developed guidelines for counsel (Guidelines on Party-Representative Ethics), but these do not have mandatory consequences.

The SIAC has published a Code of Ethics for an Arbitrator.

(xi) Have arbitral institutions in your jurisdiction implemented rules empowering arbitral tribunals to exclude counsel based on conflicts of interest or other reasons?

The SIAC Rules do not presently contain any rules expressly empowering the tribunal to exclude counsel based on conflicts of interest or other reasons.

(xii) Has your jurisdiction adopted any rules with regard to remote hearings and has there been any court decisions on same?

There are no restrictions under Singapore law against holding remote arbitration proceedings. Thus far, there have been no court decisions on remote hearings in arbitration specifically.

X. Awards

(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?

An arbitral award must be made in writing and signed by the arbitrator(s). If there is more than one arbitrator, the award is valid so long as a majority of the arbitrators sign the award and the reason for the omitted signature(s) is stated.

The award must give reasons unless the parties agree otherwise or the award was made by consent. The award must also state its date and place of arbitration. Where the SIAC Rules apply, the award must be approved by the SIAC Registrar before it can be issued.

Unless otherwise agreed by the parties, the tribunal may award any remedy or relief that could have been ordered by the General Division of the High Court if the dispute had been the subject of civil proceedings in that court. The tribunal is accordingly empowered to grant a wide range of remedies, including damages, rectification, injunctive relief, declarations, indemnities and specific performance.

(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?

The issue of whether particular types of damages may be claimed as well as the principles relating to remoteness of damages are generally governed by the substantive law, while the measure of damages is generally governed by the law applicable to the arbitral procedure.

Under Singapore law, damages are usually compensatory and quantified so as to place the aggrieved party, as far as possible, in the position it would have been in had the agreement not been breached (expectation loss) or by reference to costs incurred in reliance on the other party performing its contractual obligations (reliance loss). Damages are usually assessed as of the time of the breach, although events occurring subsequent to the breach may be taken into account where appropriate.

There is no rule preventing arbitrators from awarding punitive damages in Singapore. That said, under Singapore law, such damages are exceptional and granted only for claims in tort, and rarely awarded in Singapore arbitrations.

Where a party's claim for interest is based on a contractual provision, issues relating to interest will be determined by the governing law of the contract. Otherwise, the award of interest is a matter governed by the applicable procedural law.

Under the IAA and AA, the tribunal is permitted to award interest (whether simple or compound) on the whole or any part of any sum which is awarded to any party (for the whole or any part of the period up to the date of the award), or is in issue in the proceedings but is paid before the date of the award (for the whole or any part of the period up to the date of payment). The basis (simple or compound; annual or monthly) and rate of interest is at the discretion of the tribunal and largely dependent on the circumstances of the case.

Unless the award otherwise provides, the sum awarded carries interest at the same rate as a judgment debt.

(iii) Are interim or partial awards enforceable?

Both the IAA and AA allow the enforcement of interim or partial awards.

It should be noted, however, that the IAA and AA define an award as 'a decision of the arbitral tribunal on the substance of the dispute and includes any interim, interlocutory or partial award'. This definition specifically excludes any interim orders or directions.

The Singapore courts have held that any decisions or directions made by the tribunal which do not determine substantive matters in dispute will not be considered as 'awards', even if they are labelled as such. Nevertheless, the IAA and AA also provide for the enforceability of orders or directions made or given by an arbitral tribunal.

(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?

Arbitrators are allowed to issue dissenting opinions to the award. There are no specific rules that dictate the form and content of dissenting opinions.

If the tribunal is unable to reach a consensus, the majority decision is binding. The SIAC Rules further provide that if there is no majority, the award shall be made by the presiding arbitrator alone.

(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?

Consent awards are permitted under Singapore law. For example, parties may arrive at a settlement of the dispute and request the tribunal to record the settlement agreement in the terms of an award.

A consent award has the same status and effect as any other award on the merits of the case and may be enforced in the same manner.

Where the SIAC Rules apply, if the parties do not require a consent award, they will have to confirm in writing to the SIAC Registrar that a settlement has in fact been reached as well as make payment of any outstanding costs of arbitration. The tribunal will be discharged and the arbitration concluded only upon receipt of such confirmation and payment.

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

Arbitrators are allowed to make corrections in any award of 'any errors in computation, any clerical or typographical errors or other errors of similar nature'. Corrections may be made on the tribunal's own initiative or at the request of any of the parties within 30 days of receipt of the award.

Any party may request the tribunal to give an interpretation of a specific point or part of the award, with the agreement of all the other parties. Unless otherwise agreed, requests for interpretation must be made within 30 days of the receipt of the award.

The tribunal must make any correction or issue any interpretation deemed necessary within 30 days of receipt of the request; whether by amending the original award itself or by way of a separate memorandum.

In addition, unless otherwise agreed by the parties, a party may, with notice to the other parties, request the tribunal to make an additional award as to claims presented to the tribunal but omitted from the award. The tribunal may make such additional awards only if the claim was one which was originally presented to arbitrators.

These powers to correct, amend or supplement the award do not empower the tribunal to correct errors in its reasoning or judgment, whether in law or fact. Matters which have been finally resolved in the earlier award cannot be revisited.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

Subject to parties' agreement, tribunals generally have broad discretion to allocate and award costs.

Typically, reasonable costs are awarded to the successful party, based on the time spent and the complexity of the case.

The SIAC Rules provide that the Registrar will determine the tribunal's fees and expenses, SIAC's fees and expenses, and the costs of any expert appointed by the tribunal at the conclusion of the proceedings, and the tribunal shall specify in the award the total amount of the costs of the arbitration and determine the apportionment of costs between the parties.

(ii) What are the elements of costs that are typically awarded?

Typically, an award of costs includes: (a) the tribunal's fees and expenses; (b) the administrative fees and expenses of the arbitral institution; (c) the costs of expert advice and other assistance required by the tribunal; and (d) the party's reasonable legal and other costs and disbursements.

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

In the absence of any agreement by the parties, the tribunal may decide on its own costs and expenses; subject to the parties' right to require that such fees be assessed by the SIAC Registrar (for arbitrations under the IAA) or by the Registrar of the Supreme Court (for arbitrations under the AA).

Where the SIAC Rules apply, the tribunal's fees are determined in accordance with the SIAC's Schedule of Fees in force at the time of the commencement of the arbitration. The parties may also agree to alternative methods of determining the Tribunal's fees prior to the constitution of the Tribunal.

(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?

Arbitrators have a wide discretion to determine the apportionment of the costs of the arbitration, unless the parties have agreed otherwise. Note, however, that under the AA, any provision that parties shall in any event pay their own costs in an arbitration agreement is deemed void, unless such provision is part of an agreement to arbitrate a pre-existing dispute.

In apportioning costs, the tribunal may take into account the conduct of the parties in the arbitration, such as non-compliance with the tribunal's directions, obstructive conduct leading to wasted time or otherwise protracting the

arbitration, gross exaggeration of claims and furnishing of unnecessary evidence on irrelevant issues or excessive evidence over non-substantive issues.

(v) Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?

Any costs directed by an award to be paid are subject to assessment (in the case of the IAA, assessable by the SIAC Registrar; in the case of the AA, assessable by the Registrar of the Supreme Court).

Parties may apply to set aside an award of costs, but the Singapore courts are generally reluctant to review a tribunal's award of costs. In one case, the High Court held that the amount of costs awarded by an arbitrator to a successful party could not ever be considered injurious to the public good or shocking to the conscience no matter how unreasonable it might prove to be upon examination. It concluded that there is no public interest involved in the legal costs of parties to private litigation.

XII. Challenges to Awards

(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?

A dissatisfied party may apply to the Singapore courts for a setting aside of a Singapore arbitration award.

The grounds for setting aside a Singapore award (under the IAA and AA) mirror Article 34 of the Model Law, with two additional grounds:

- (a) The making of the award was induced or affected by fraud or corruption; or
- (b) 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.

In general, the courts in Singapore do not readily grant applications to set aside arbitration awards, and only where the court is satisfied that the grounds for challenge have been substantiated.

The application must be made within 3 months from the date of receipt of the award. Challenge proceedings take approximately a year until final disposal (including any appeal from decision of first instance). Challenge proceedings do not automatically stay any enforcement proceedings. However, the court may give directions for enforcement proceedings to be heard together with the challenge proceedings. In a reported decision, the court refused to adjourn enforcement of a foreign-seated award in Singapore even though the award was under challenge at the seat.

(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?

Parties may agree to waive their right to challenge an arbitration award. The waiver must be expressed clearly and unequivocally.

(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?

A party may appeal to the court on a question of law in domestic arbitrations arising out of an award under section 49 AA. Such appeals are not permitted in international arbitrations under the IAA.

The Singapore courts have emphasized that a 'question of law' must necessarily be a finding of law which the parties dispute, that requires the guidance of the court to resolve; when an arbitrator does not apply a principle of law correctly, that failure is a mere erroneous application of law which does not entitle an aggrieved party to appeal.

Appeals under section 49 AA must be brought within 28 days of the date of the award. In addition, the applicant must first exhaust any available arbitral process of appeal or review and any available avenue for correction or interpretation of the award.

Appeals on a question of law can only be made with the leave of court. Parties may also agree to dispense with the need to obtain leave to appeal. The court will grant leave to appeal if satisfied that:

- The determination of the question will substantially affect the rights of one or more of the parties;
- The question is one which the tribunal was asked to determine;
- On the basis of the findings of fact in the award:
 - o The decision of the tribunal on the question is obviously wrong; or
 - o The question is one of general public importance and the decision of the tribunal is at least open to serious doubt; and
- Despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the court to determine the question.

Further leave of the court must be obtained for any appeal from a decision of the court under section 49 to grant or refuse leave to appeal. The court will grant leave for further appeal to the Court of Appeal only if the question of law is 'one of general importance, or one which for some special reason should be considered by the Court of Appeal.'

It should be noted that under section 49 AA, an agreement to dispense with reasons for the tribunal's award is deemed to be an agreement to waive the right to appeal against the award on a question of law.

(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?

The court may remit an award, in whole or in part, to the tribunal, for the tribunal to take such action that will eliminate the grounds for setting aside. The courts may not remit an award after it has been set aside.

The courts generally prefer to remit the award (instead of setting it aside entirely) unless such order is inappropriate in the circumstances of the case.

In determining whether to remit the award, the court will consider whether the tribunal's error is remediable (for example, if the error relates to a single isolated or stand-alone issue) and whether the tribunal's mandate no longer continues because of the error (for example, where the tribunal incorrectly found jurisdiction or had failed entirely to appreciate the correct questions it had to pose to itself, which would militate in favour of setting aside the award instead).

The tribunal's original award renders it *functus officio* save to the extent that the order for remission gives it revived power. The scope of remission is specifically defined by the terms of the court order ordering remission, and there is no basis for a party or the tribunal to seek to re-open or expand the subject matter of the award or arbitration beyond the scope of remission.

(v) Is there a specialist arbitration court in your jurisdiction?

There is no specialist arbitration court in Singapore. However, arbitration matters are managed by arbitration judges in the Companies, Insolvency, Equity & Trusts and Arbitration docket of the General Division of the High Court, and by the Singapore International Commercial Court (SICC).

- (vi) To what extent do courts in your jurisdiction allow arbitrators to amend and/or replace wrongly invoked law or the law not invoked by the parties (iura novit arbiter)? Could this be a basis to set aside the award?**

This could be a basis for setting aside an award where, as a result of the arbitrator's initiative, a party was deprived of the opportunity to present his case, where the relevant issue was not referred to for determination by the tribunal, or where the same is in breach of the parties' agreed procedure. Much will depend on the specific factual circumstances.

XIII. Arbitrator Liability

- (i) Does the arbitration law in your jurisdiction expressly provide for the immunity of arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings from civil liability in connection with their mandate? If so, are there exceptions to this immunity?**

The IAA and AA provide 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 of law, fact or procedure made in the course of arbitral proceedings or in the making of an award.

The IAA also provides immunity to the appointing authority from any act or omission unless the said act or omission is said to have been in bad faith.

There is no express provision for immunity of experts, translators, interpreters or other participants in the arbitration proceedings.

- (ii) Does this immunity, if any, extend to criminal liability?**

There are no provisions providing for immunity of arbitrators from criminal liability.

XIV. Recognition and Enforcement of Awards

- (i) What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?**

Singapore and New York Convention awards may, with leave of court, be enforced in the same manner as a judgment or order of the High Court. The AA was amended in 2003 to permit enforcement, with leave of court, of foreign non-New York Convention awards. Where leave is so given, judgment may be entered in terms of the award.

The procedure for enforcement of Singapore awards is similar under both the IAA and the AA. The application for leave to enforce an award is made ex parte, supported by an affidavit exhibiting the arbitration agreement and the duly authenticated original award (or, in either case, a duly certified copy thereof). The affidavit should also state the extent to which the award has not been complied with at the date of the application. For awards under the IAA, where the award or agreement is in a language other than English, a translation of it in the English language, duly certified by a sworn translator, must be provided.

The order giving leave for enforcement, if granted, must be served on the award debtor. Within 14 days after the order is served or within such other period as the court may fix (where the order is served out of jurisdiction), the debtor may

apply to set it aside and the award shall not be enforced until after the expiration of such period or, if the debtor applies to set aside the order within the same period, until after the application is finally disposed of.

Both the IAA and AA are silent as to the grounds on which the court may refuse enforcement of a Singapore award. However, it is generally accepted that Singapore awards, whether made under the IAA or the AA, may only be refused enforcement if the grounds for setting aside exist.

The grounds for refusing the enforcement of a foreign award in Singapore mirror Article V of the New York Convention and Article 36 of the Model Law.

(ii) If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

Once judgment has been entered in terms of the award, this has the effect of ‘converting’ the award into a judgment of the Singapore courts. The award creditor can then apply to the court for an enforcement order to enforce the judgment through methods such as delivery or possession of property, seizure and sale of property, and attachment of a debt.

(iii) Are conservatory measures available pending enforcement of the award?

Pending enforcement of the award, the claimant may apply for conservatory measures such as freezing or Mareva injunctions, in aid of enforcement.

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

In practice, the courts generally uphold and enforce arbitration awards unless one of the grounds for challenge clearly exists.

Where a foreign award has been set aside by the courts at the place of the arbitration, this is a ground for refusal of enforcement of the award under the IAA.

(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?

The length of time required for the recognition and enforcement of an award will depend on the particular circumstances of each case, including whether the award debtor seeks to challenge enforcement. Generally, enforcement proceedings take between one to three months. If there is no challenge to enforce the award, the proceedings can be concluded fairly quickly. If the application is opposed, however, proceedings can take about 1 year for final disposal.

Under the Limitation Act, an application to enforce an award must be made within six years.

XV. Sovereign Immunity

(i) Do state parties enjoy immunities in your jurisdiction? Under what conditions?

The Singapore State Immunity Act 1979 reflects the restrictive State immunity doctrine (ie public acts (*jure imperii*) of a foreign state are entitled to immunity, but private acts (*jure gestionis*) are not.

In keeping with that, the State Immunity Act expressly provides an exception from state immunity as respects Singapore court proceedings which relate to a written arbitration agreement.

(ii) Are there any special rules that apply to the enforcement of an award against a state or state entity?

The enforcement of an award against the Singapore government is also subject to the Government Proceedings Act and Order 59 of the Rules of Court, which provide the applicable procedure for court proceedings against the Singapore government.

(iii) Are there any requirements for arbitrations involving sovereign entities?

There are no special requirements for arbitrations involving sovereign entities, apart from the legislation identified above.

XVI. Investment Treaty Arbitration

(i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?

Singapore ratified the Washington Convention in 1968. Under the Arbitration (International Investment Disputes) Act, once registered, a Washington Convention award has the same effect as a judgment of the Singapore High Court and is binding on the Singapore Government. The SIAC has also released the first edition of Investment Arbitration Rules, a specialised set of rules intended to address the unique issues in the conduct of international investment arbitration.

(ii) Has your country entered into bilateral investment treaties with other countries?

Singapore is party to 44 international investment treaties, and has to date entered into 21 regional and bilateral Free Trade Agreements containing investment chapters.

(iii) Have there been any recent court decisions in your country in relation to intra-European investor-state arbitration?

No.

XVII. Resources

(i) What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?

Halsbury's Laws of Singapore, vol 1(2).

Sundaresh Menon, Gen. Ed., Arbitration in Singapore: A Practical Guide, 2nd Ed. (Sweet & Maxwell, 2018).

D Joseph, D Foxton, Gen Eds., Singapore International Arbitration: Law and Practice, 2nd Ed. (LexisNexis, 2018).

(ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?

The SIAC, SIArb, and CIArb (Singapore) routinely organize seminars and conferences throughout the year. More information can be obtained from the respective websites.

XVIII. Trends and Developments

(i) Do you think that arbitration has become a real alternative to court proceedings in your country?

Arbitration is established as a real alternative to court proceedings in Singapore. The popularity of Singapore as an international arbitration forum is supported by Singapore's position as a hub for regional trade and commerce, the accessibility of Singapore to regional clients and the perception of Singapore as a neutral destination to resolve disputes.

(ii) What are the trends in relation to other ADR procedures, such as mediation?

Singapore is generally supportive of, and actively seeks to promote other forms of alternative dispute resolution, in particular mediation. Under the Rules of Court 2021 (applicable to court proceedings in Singapore), parties are under a continuing duty to consider amicable resolution of their dispute, and failure to do so may result in adverse costs consequences.

Mediation is rapidly growing in importance as a form of alternative dispute resolution in Singapore. In 2021, the total value of cases filed for mediation at the Singapore International Mediation Centre equalled the US\$3 billion total dispute value for 2014-2020. In 2022, the total dispute value further rose to US\$4.84 billion.

Mediation is seen as a faster and more cost-effective way for disputing parties to resolve their dispute, while preserving commercial relationships between parties.

(iii) Are there any noteworthy recent developments in arbitration or ADR?

The IAA was recently amended on 1 December 2020, which introduced numerous provisions including a default method of appointment of arbitrators in multi-party situations, and an explicit recognition of the powers of the arbitral tribunal and the High Court to enforce obligations of confidentiality, by making orders or giving of directions, where such obligations exist.

As of 4 May 2022, conditional fee arrangements can be entered into between lawyers and clients in specified categories of proceedings, including arbitration proceedings and related court and mediation proceedings.

On 12 January 2023, the SICC along with Singapore International Mediation Centre (SIMC) launched a Litigation-Mediation-Litigation framework to promote amicable resolution of international commercial disputes, by setting out a procedure under which disputes commenced in the SICC may be referred to the SIMC for mediation, and the procedure to continue or terminate in the SICC upon conclusion of the mediation.

(iv) Are there any official plans to reform the arbitration laws and practice in your jurisdiction?

There are presently no official plans to reform the arbitration laws in Singapore, although as mentioned above, the legislative framework is periodically reviewed.

In the last quarter of 2023, the SIAC conducted a public consultation on the draft 7th edition of the SIAC Rules.

(v) Are there any rules governing third-party funding in your jurisdiction? Is there an obligation to disclose the identity of any non-party who has an economic interest in the outcome of the proceedings, including any third party funder? Have there been any recent court decisions in your jurisdiction in relation to third-party funding?

Yes, these include the PCR, the Civil Law Act and the Civil Law (Third-Party Funding) Regulations. Under these rules, in prescribed classes of dispute resolution proceedings (including international arbitration proceedings and court or mediation proceedings arising out of or in any way connected to international arbitration), contracts providing for third-party funding are not illegal or contrary to public policy, provided that funders fulfil certain qualifying criteria including the requirement to carry on the principal business of funding dispute resolution proceedings, meeting a paid-up share capital of not less than S\$5 million (or equivalent in foreign currency) and having managed assets not less than S\$5 million (or equivalent in foreign currency).

Under the PCR, there is an obligation to disclose the identity of any third-party funder to the court, tribunal and every other party in the proceedings.

There have been a number of recent court decisions in relation to third-party funding, including decisions which clarified the applicability of regulations permitting third-party funding, and the implications of the third-party funding regime on the assessment of costs in proceedings before the SICC.

(vi) Has your country implemented a sanctions regime? Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent court decisions in your country in relation to the impact of sanctions on international arbitration proceedings?

Singapore has a sanctions regime, and implements sanctions under UN Security Council Resolutions through the United Nations Act and regulations issued by the Monetary Authority of Singapore.

There is no recent court decision 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 upon a complying presentation of documents.

In relation to international public policy generally, the Singapore Court of Appeal has held that in a contest between a higher international public policy at common law and statutory public policy, the latter must prevail.