SINGAPORE

DELOS GUIDE TO ARBITRATION PLACES (GAP)

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

1. Law
   a. Framework
   b. Adherence to international treaties
   c. Limited court intervention
   d. Arbitrator immunity from civil liability
2. Judiciary
3. Legal expertise
4. Rights of representation
5. Accessibility and safety
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VERSION: 29 May 2020 (v02.001)

There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.
IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Arbitration law in Singapore is consistent with the Model Law regime – it is generally pro-arbitration, premised on minimal curial intervention. Arbitration awards – both domestic and international (generally, where at least one of the parties has its place of business in any state other than Singapore, or the place with which the subject-matter of the dispute is most closely connected is situated outside of the state in which the parties have their place of business) – are readily enforceable before the Singapore courts, which are sophisticated in their understanding of international arbitration jurisprudence.

Despite a principle of minimal curial intervention, where necessary Singapore courts are an avenue for support before, during and after the arbitration process. For instance, parties may apply to the Singapore court for interim measures in support of the arbitration (for instance the seeking of injunctions). Where possible, however, these applications should first be made to the arbitral tribunal.

Recently, Singapore has embraced third-party funding, legalising it for arbitrations seated in Singapore. Parties involved in arbitration (as well as related mediation and court proceedings) may now avail themselves of third-party funding, subject to certain restrictions provided for in the applicable regulations.

Key places of arbitration in the jurisdiction?

Singapore is a city-state.

Civil law / Common law environment?

Common law.

Confidentiality of arbitrations?

Whilst the duty of confidentiality in arbitration is not expressly embodied in statute, case law confirms that there is an implied common law duty of confidentiality of arbitrations.

Requirement to retain (local) counsel?

Parties can either retain external counsel or be self-represented. However, in arbitration-related proceedings in court, all companies need to be represented by Singapore-qualified lawyers. International lawyers may represent parties in Singapore-seated arbitrations, even without local lawyers.

Ability to present party employee witness testimony?

Yes; there is nothing in Singapore law that prohibits this per se.

Ability to hold meetings and/or hearings outside of the seat?

Yes; permitted if agreed by the parties.

Availability of interest as a remedy?

Yes; there are no restrictions prescribed in respect of the awarding of interest.1

Ability to claim for reasonable costs incurred for the arbitration?

Yes; case law confirms that costs are for the arbitral tribunal to decide.

Restrictions regarding contingency fee arrangements and/or third-party funding?

Third-party funding is generally allowed in Singapore-seated arbitrations and related mediation and court proceedings. On the other hand, Singapore-qualified lawyers and registered foreign lawyers are not allowed under applicable professional conduct rules to enter into contingency or conditional fee arrangements.

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1 See section 35 of the AA; section 20 of the IAA.
in relation to Singapore-related arbitrations (which include Singapore seat or Singapore law governed arbitrations). However, at the time this report, the Singapore Ministry of Law is conducting a public consultation on whether to permit conditional fee arrangements for international arbitration and whether such arrangements should be regulated.²

<table>
<thead>
<tr>
<th>Party to the New York Convention?</th>
<th>Yes.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other key points to note?</td>
<td>✤</td>
</tr>
<tr>
<td>WJP Civil Justice score (2019)</td>
<td>0.83</td>
</tr>
</tbody>
</table>

² See sections 7.1 and 8.1 below.
**ARBITRATION PRACTITIONER SUMMARY**

Arbitration law in Singapore is consistent with the Model Law regime – it is generally pro-arbitration, premised on minimal curial intervention. Arbitration awards, whether issued in arbitrations seated in Singapore or in other New York Convention countries, are readily enforceable before the Singapore courts, which are sophisticated in their understanding of international arbitration jurisprudence.

Despite a principle of minimal curial intervention, where necessary Singapore courts are an avenue for support before, during and after the arbitration process. For instance, parties may apply to the Singapore court for interim measures in support of the arbitration (for instance the seeking of injunctions). Where possible, however, these applications should first be made to the arbitral tribunal.

A relatively recent development in Singapore is the legalisation of third-party funding for international arbitrations seated in Singapore. Parties involved in arbitration (as well as related court and mediation proceedings) may now avail to third party funding, subject to certain restrictions as provided for in the regulation: The Civil Law (Third-Party Funding) Regulations 2017 (S 68/2017).

<table>
<thead>
<tr>
<th>Date of arbitration law?</th>
<th>The arbitration law (i.e. the two relevant statutes: The Arbitration Act and the International Arbitration Act) was last amended in 2016; it continues to be updated by case law. At the time of this report (i.e. October 2019), the Singapore Ministry of Law is conducting a public consultation in relation to several proposed amendments to the International Arbitration Act. As part of its pro-arbitration policy, Singapore updates its international arbitration legislation every few years to ensure that they are consistent with developments in practice and users’ expectations.</th>
</tr>
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<tbody>
<tr>
<td>UNCITRAL Model Law? If so, any key changes thereto?</td>
<td>Yes. Singapore has adopted the UNCITRAL Model Law with some modifications. For example, Singapore has substituted Chapter VIII of the Model Law (which addresses the recognition and enforcement of awards) with Part III of the International Arbitration Act.</td>
</tr>
<tr>
<td>Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?</td>
<td>Yes, there is an arbitration docket at the High Court such that judges experienced in arbitration-related matters are routinely rostered to hear such matters. Since January 2018, the Singapore International Commercial Court (SICC) (which is a division of the Singapore High Court) may also hear international arbitration related cases. The SICC has a bench of international judges from common and civil law jurisdictions, including foreign judges with specialised knowledge of arbitration law.</td>
</tr>
<tr>
<td>Availability of <em>ex parte</em> pre-arbitration interim measures?</td>
<td>Yes.</td>
</tr>
<tr>
<td>Courts’ attitude towards the competence-competence principle?</td>
<td>Wholly supportive.</td>
</tr>
<tr>
<td>Grounds for annulment of awards additional to those based on the criteria for the recognition and</td>
<td>In setting aside cases, section 24 of the International Arbitration Act provides that: “24. Notwithstanding Article 34(1) of the Model Law, the High Court may, in addition to the grounds set out in</td>
</tr>
</tbody>
</table>
| enforcement of awards under the New York Convention? | Article 34(2) of the Model Law, set aside the award of the arbitral tribunal if —  
(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.”  
However, the courts have generally interpreted these provisions to be consistent with and not different from the due process and public policy rights already provided for under the Model Law. |
| Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration? | See section 5.7 below. This issue has not been decided by the Singapore courts. Unless there are particularly strong facts or reasons favouring enforcement, currently, Singapore courts are likely to be dismissive. |
| Other key points to note? | Φ |
JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law?

1.1.1 If yes, what key modifications if any have been made to it?

The arbitration law is based on the UNCITRAL Model Law. This is given effect to by statute – generally the Arbitration Act (Cap 10) (“AA”) for domestic arbitrations and the International Arbitration Act (Cap 143A) (“IAA”) for international arbitrations. Chapter VIII of the Model Law, which deals with the recognition and enforcement of awards, is excluded (see section 3 of the IAA). In its place, Part III of the IAA is enacted to address the recognition and enforcement of international arbitrations seated outside Singapore. For international arbitrations seated in Singapore, case law confirms that the grounds for refusing enforcement (as distinct from setting aside) of such awards mirror the grounds under Chapter VII of the Model Law and/or article V of the New York Convention.3

1.2 When was the arbitration law last revised?

Both the IAA and the AA were last amended in 2016, and the statutes continue to be interpreted and supplemented by the courts in judgments. However, at the time of updating this report, the Ministry of Law of Singapore is conducting a public consultation on a number of proposed amendments to the IAA.4

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

The law governing the arbitration agreement is determined by the parties’ choice. Where there is no express indication, the parties’ implied choice is presumed to be the governing law of the main contract (typically the parties’ express choice of law, i.e. within a choice of law clause).5 If that presumption is rebutted, the law governing the arbitration agreement will be the system of law with which the arbitration agreement has the closest and most real connection.6

2.2 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

The arbitration agreement is considered independent – in the sense it is separable – from the rest of the contract. For instance, if a party was impugning the validity of the (rest of the) contract, this would not on its own compromise the arbitration agreement.7

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3 PT First Media TBK v Astro Nusantara International BV and ors and another appeal [2013] SGCA 57 [86]-[99].
5 BCY v BCZ [2016] SGHC 249 [67]; BMO v BMP [2017] SGHC 127 at [39]. If the arbitration agreement is “freestanding” in the sense it is not a term of any other contract, the parties’ implied choice would be presumed to be the law of the seat: BCY v BCZ [2017] 3 SLR 357 at [67].
6 BCY v BCZ [2016] SGHC 249 at [40].
7 Fiona Trust & Holding Corporation v Privalov [2007] 2 All ER (Comm) 1053 at [18]: “Even if the allegation is that there was no concluded agreement (for example, that terms of the main agreement remained to be agreed) that is not necessarily an attack on the arbitration agreement. If the arbitration clause has been agreed, the parties will be presumed to have intended the question of whether there was a concluded main agreement to be decided by arbitration.” This is cited in BCY v BCZ [2016] SGHC 249 at [88].
2.3 What are the formal requirements (if any) for an enforceable arbitration agreement?

The only formal requirement of an arbitration agreement is that it has to be in writing. This is set out in the AA (at section 4) and the IAA (at section 2A).

2.4 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

A third party may not be bound by an arbitration agreement to which it is (by definition) not privy. Even where a company is related to another (or to individuals), courts will generally not construe third parties as privy to the arbitration agreement. In particular, the “group of companies” doctrine has not been accepted in Singapore.

2.5 Are there restrictions to arbitrability? In the affirmative:

2.5.1 Do these restrictions relate to specific domains (such as IP, corporate law, etc.)?

There are restrictions. Section 11(1) of the IAA (titled “Public policy and arbitrability”) states that “Any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless it is contrary to public policy to do so.” Consistent with this, the Singapore courts have ruled that, “where the subject matter of the dispute is of such a nature as to make it contrary to public policy for that dispute to be resolved by arbitration”, the dispute will be non-arbitrable. This includes matters which involve or concern the interests of third parties, public rights or concerns and matters of uniquely governmental authority.

Claims of minority oppression under section 216 of the Companies Act are generally arbitrable, because they “generally [do] not engage the public policy considerations involved”. The fact that the arbitral tribunal is unable to grant certain reliefs sought in respect of the minority oppression claim would not in itself render the subject matter of the dispute non-arbitrable. This argument may be applied mutatis mutandis to support the arbitrability of disputes over the fulfilment of grounds for winding up. This issue remains to be decided by the Singapore courts.

2.5.2 Do these restrictions relate to specific persons (i.e. State entities, consumers, etc.)?

Not at the moment; insofar as the character of the persons bring the matter within the criterion of non-arbitrability as discussed above.

See BC Andaman Co Ltd and others v Xie Ning Yun and another [2017] 4 SLR 1232 [98].

See Manuchar Steel Hong Kong Ltd v Star Pacific Line Pte Ltd [2014] 4 SLR 832. The “group of companies” doctrine, or the “single economic entity concept”, refers to the doctrine that an agreement signed by one company in a group of companies will bind non-signatory companies affiliated to that signatory, if the circumstances surrounding the negotiation, execution, and termination of the agreement show that the mutual intention of all the parties was to bind the non-signatories as well.

Section 11(1) of the IAA (emphasis added).

Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals [2016] 1 SLR 373 at [75].

Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals [2016] 1 SLR 373 at [71].

Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals [2016] 1 SLR 373 at [84]. This left open the possibility that the facts of particular section 216 claims might be non-arbitrable: L Capital Jones Ltd and another v Maniach Pte Ltd [2017] SGCA 3 at [26].

Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals [2016] 1 SLR 373 [103].
3. Intervention of domestic courts

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

The Singapore courts have adopted a philosophy of facilitating arbitration. To this end, they approach arbitration agreements with a view of “upholding, rather than defeating, the typical expectations of commercial parties who choose arbitration” so as to prevent fragmentation of dispute resolution. Although the case would turn closely on its facts and the relative prejudice to the parties, generally, the Singapore courts would stay if it is clear that there is an operative arbitration clause and the dispute falls within its scope.

3.1.1 If the place of the arbitration is inside of the jurisdiction?

For domestic arbitrations seated in Singapore, a stay is discretionary and may be granted where the court is satisfied, on a prima facie basis, that: (1) there is no sufficient reason why the matter should not be resolved in accordance with the arbitration agreement; and (2) the party applying for a stay remains ready and willing to arbitrate. An important factor in the court’s exercise of discretion is the arbitrability of the dispute (see section 2.5 above).

For international arbitrations seated in Singapore, the applicant is entitled as of right to a stay if it is at least arguable or appears prima facie that: (1) the applicant is a party to the arbitration agreement; (2) the court proceedings instituted involve a matter which is the subject of the arbitration agreement; and (3) the arbitration agreement is not “null and void, inoperative or incapable of being performed”. Once the applicant discharges its burden of proving these requirements, a stay becomes mandatory. The term “null and void” refers to cases where the arbitration agreement suffers from invalidity from the outset, such as due to misrepresentation, duress, fraud, mistake, or undue influence; “inoperative” covers cases where the arbitration agreement has ceased to have effect, such as revocation or waiver by the parties; and “incapable of being performed” covers cases where the arbitration cannot effectively be set into motion, such as where the arbitration clause is too vaguely worded, or other terms of the contract contradict the parties' intention.

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15 Larsen Oil & Gas Pte Ltd v Petroprod Ltd [2011] 3 SLR 414 at [19]. See also Tjong Very Sumito v Antig Investments Pte Ltd [2009] 4 SLR(R) 732, where the Court of Appeal adopted a generous interpretation of the word “dispute” in an arbitration clause.
18 Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals [2016] 1 SLR 373 at [65]; Uni-Navigation Pte Ltd v Wei Loong Shipping Pte Ltd [1992] 3 SLR(R) 595 at [16]-[17]; Kwan Im Tong Chinese Temple and another v Fong Choon Hung Construction Pte Ltd [1998] 1 SLR(R) 401 at [14]; Coop International Pte Ltd v Ebel SA [1998] 1 SLR(R) 615 at [103]; Multiplex Construction Pty Ltd v Sinalte Enterprise Pte Ltd [2005] 2 SLR(R) 530 at [6].
19 Section 6(2) of the AA; Coop International Pte Ltd v Ebel SA [1998] 1 SLR(R) 615 at [149].
20 Larsen Oil & Gas Pte Ltd v Petroprod Ltd [2011] 3 SLR 414 at [23]-[26].
22 Dyna-jet Pte Ltd v Wilson Taylor Asia Pacific Pte Ltd [2017] 3 SLR 267 at [25].
to arbitrate. A dispute involving a non-arbitral subject matter would render an arbitration agreement either “inoperative” or “incapable of being performed”. 24

For both domestic and international arbitrations, the party applying for a stay must do so “at any time after appearance and before delivering any pleading or taking any other step in the proceedings”. 25 An applicant is deemed to have taken a step in proceedings if he employs court procedures to defend those proceedings on their merits, or demonstrates an unequivocal intention to submit to the court’s jurisdiction and participate in court proceedings. 26 Applications which amount to a step in proceedings include an application for leave to defend or strike out, an application for discovery and an application for directions. 27 However, an application for an extension of time does not amount to a step in the proceedings if it was made bona fide to protect the applicant’s position in the event that his stay application was refused. 28

3.1.2 If the place of the arbitration is outside of the jurisdiction?

Even if the place of arbitration is outside Singapore, Singapore courts must stay court proceedings unless the arbitration agreement is “null and void, inoperative or incapable of being performed”. 29 The Singapore courts have in previous instances upheld or ordered a stay of court proceedings in favour of an arbitration agreement for foreign arbitration. 30

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

Arbitral tribunals in international arbitrations are empowered under the IAA to grant interim injunctions or any other interim measures, 31 which include an interim anti-suit injunction restraining parties from initiating or continuing litigation proceedings. 32 Such orders are enforceable (with the High Court’s leave) in the same manner as if they were orders made by a court. 33

However, arbitral tribunals in domestic arbitrations do not enjoy similar powers, unless specifically conferred upon by the parties. 34 Such powers are instead reserved for the court, as greater court supervision is exercised over domestic arbitration for the development of domestic commercial and legal practice. 35


25 Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals [2016] 1 SLR 373 at [74].

26 Section 6(1) of the AA; Section 6(1) of the IAA.

27 Carona Holdings Pte Ltd and others v Go Go Delicacy Pte Ltd [2008] 4 SLR(R) 460 at [55].

28 Carona Holdings Pte Ltd and others v Go Go Delicacy Pte Ltd [2008] 4 SLR(R) 460 at [55].

29 Carona Holdings Pte Ltd and others v Go Go Delicacy Pte Ltd [2008] 4 SLR(R) 460 at [94]:[99].

30 Coop International Pte Ltd v Ebel SA [1998] 1 SLR(R) 615 at [149].


32 Section 12(1)(x) of the IAA.

33 PT Pukuafu Indah and others v Newmont Indonesia Ltd and another [2012] 4 SLR 1157 at [16] and [18].

34 Section 12(6) of the IAA.

35 Section 28(2) of the AA; NCC International AB v Alliance Concrete Singapore Pte Ltd [2008] 2 SLR(R) 565 at [49].

36 Section 31(1)(d) of the AA.

3.3 On what ground(s) can the court intervene in arbitrations seated outside of the jurisdiction? (Relates to the anti-suit injunction but not only)

The IAA empowers the High Court to order interim measures in aid of arbitrations seated outside Singapore. Such orders may be made against a foreign defendant, and even if it relates to a matter that is not justiciable before a Singapore court. However, this power is exercised scrupulously, and only when it will assist in the just and proper conduct of arbitration, or in the preservation of property which is the subject matter of the arbitration. The High Court may also refuse to make orders if the fact that the arbitration is seated outside Singapore makes it inappropriate to do so. Further, the High Court will only make such orders (a) with the arbitral tribunal’s permission or with the parties’ written agreement (unless the case is urgent), and (b) if the arbitral tribunal (or arbitral institution) has no power or is unable to act effectively for the time being.

The High Court may make orders or give directions for, inter alia, the preservation of any property which forms the subject-matter of the dispute; the prevention of dissipation of assets; and any interim injunction or any other interim measure. This includes the grant of Anton Piller orders and Mareva injunctions, as well as interim mandatory injunctions (though only granted in exceptional circumstances), but is not limited as such.

Singapore courts may also grant interim anti-suit injunctions where there is a breach of an arbitration agreement, provided that it is promptly sought, and before the court proceedings are too far advanced.

4. The conduct of the proceedings

4.1 Can parties retain outside counsel or be self-represented?

Parties can either retain outside counsel or be self-represented. However, in arbitration-related proceedings in court, all companies need to be represented by Singapore-qualified lawyers.

4.2 How strictly do courts control arbitrators’ independence and impartiality? For example: does an arbitrator’s failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances justify this outcome?

Generally, the courts adopt a policy of minimal curial intervention in arbitral proceedings. Consistent with this policy, courts’ control over the arbitrators’ independence and impartiality is generally consistent with the

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38 Section 12A of the IAA.
39 PT Gunung Madu Plantations v Muhammad Jimmy Goh Mashun [2018] 4 SLR 1420 at [57].
40 International Arbitration (Amendment) Bill 2009 (Bill 20 of 2009) at p 8.
41 NCC International AB v Alliance Concrete Singapore Pte Ltd [2008] 2 SLR(R) 565 at [28]-[29], [34] and [41]; Front Carriers Ltd v Atlantic & Orient Shipping Corp [2006] 3 SLR(R) 854 at [15].
42 Section 12A(3) of the IAA.
43 Section 12A(5) of the IAA.
44 Section 12A(6) of the IAA.
45 Section 12A(2) read with Sections 12(1)(c) to (i) of the IAA.
46 Maldives Airports Co Ltd v GMR Malé International Airport Pte Ltd [2013] 2 SLR 449 at [34].
47 NCC International AB v Alliance Concrete Singapore Pte Ltd [2008] 2 SLR(R) 565 at [75].
48 Maldives Airports Co Ltd v GMR Malé International Airport Pte Ltd [2013] 2 SLR 449 at [34].
49 Maldives Airports Co Ltd and another v GMR Malé International Airport Pte Ltd [2013] SGCA 16 at [42].
50 See, e.g., Rule 23.1 of the SIAC Rules 2016: “Any party may be represented by legal practitioners or any other authorised representatives. The Registrar and/or the Tribunal may require proof of authority of any party representatives.”
51 Rules of Court, O 5 r 6(2). However, a company or a limited liability partnership may apply to the Singapore court for leave to allow an officer of the company or limited liability partnership to act on its behalf: O 1 r 9(2).
52 AKN and another v ALC and others and other appeals [2015] 3 SLR 488 at [37].
general principle that arbitrators are expected to be free of real and apparent bias.\textsuperscript{53} To quote the High Court, “[t]he main query was whether [the] circumstances [alleged] ... disclosed evidence of apparent bias or partiality, thereby impinging on the Arbitrator’s ability to arrive at a fair and just conclusion in the Arbitration”.\textsuperscript{54}

In an instance where an arbitrator was found to have failed in his “basic duty” to “listen to both sides of the argument and give each side a chance to submit on all the relevant points”, the High Court did not hesitate in allowing the application to have him removed.\textsuperscript{55}

Courts would only intervene upon the application of one of the parties – typically the party seeking to challenge the award or the appointment of the arbitrator.

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of \textit{ad hoc} arbitration)?

If the issue concerns the interpretation of the arbitration agreement, the court would generally interpret the arbitration agreement (to ascertain the parties’ intent) and direct the parties based on its interpretation of the arbitration agreement. See, for instance, \textit{Bovis Lend Lease Pte Ltd v Jay-Tech Marine & Projects Pte Ltd and Another Application} [2005] SGHC 91, where the court construed the arbitration agreement.\textsuperscript{56} found that parties had agreed to \textit{ad hoc} arbitration, and declared that “the arbitration to be conducted pursuant to the arbitration agreement is an \textit{ad hoc} arbitration and shall be conducted by the arbitrator in accordance with such rules of the SIAC as the arbitrator determines are applicable” (at [22(b)]).

If the parties choose \textit{ad hoc} international arbitration seated in Singapore but do not specify the mechanism for constituting the arbitral tribunal and the number of arbitrators, the default mechanism in section 9 of the IAA for appointing a sole arbitrator will apply. If the parties are unable to agree on the sole arbitrator, any party may request the President of the SIAC Court of Arbitration to appoint the sole arbitrator.\textsuperscript{57}

Even for \textit{ad hoc} international arbitrations which do not specify a seat, the High Court has held that the SIAC President may be able to appoint the arbitral tribunal where the parties are unable to agree on the appointment of arbitral tribunal.\textsuperscript{58} Even where the SIAC President declines to appoint the arbitrators, the Singapore court retains a residual jurisdiction to make the appointment and thereby break the deadlock between the parties on the appointment of arbitrators.\textsuperscript{59}

In the case of \textit{ad hoc} domestic arbitrations for which the parties are unable to agree on the number of arbitrators and mechanism for appointing arbitrators, the default mechanism in Article 13 read with Article 12(2) of the AA for appointing a sole arbitrator will apply. If the parties are unable to agree on the sole arbitrator, any party may request the President of the SIAC Court of Arbitration to appoint the sole arbitrator.\textsuperscript{60}

\begin{itemize}
\item \textsuperscript{53} See, e.g., \textit{PT Prima International Development v Kempinski Hotels SA and other appeals} [2012] 4 SLR 98 at [56]-[68]. See also \textit{Prometheus Marine Pte Ltd v King, Ann Rita and another appeal} [2017] SGCA 61 at [71]. See also section 22 of the AA: “The arbitral tribunal shall act fairly and impartially and shall give each party a reasonable opportunity of presenting his case”.
\item \textsuperscript{54} \textit{PT Central Investindo v Francisccus Wongso and others and another matter} [2014] 4 SLR 978 at [12]; see also at [19].
\item \textsuperscript{55} \textit{Koh Bros Building and Civil Engineering Contractor Pte Ltd v Scots Development (Saraca) Pte Ltd} [2002] 2 SLR(R) 1063, particularly at [47].
\item \textsuperscript{56} The relevant portion of the arbitration agreement read: “All other disputes (including disputes referred to in Clause 13.2.1 which are not required by [Bovis] to be determined in accordance with Clause 13.2) will be dealt with in the following manner: ... 13.3.2 Unless otherwise agreed by the parties, the arbitrator will be appointed by the President of the Institute of Architects in Singapore (or such other body as carries on the functions of the Institute) or his nominee. 13.3.3 The arbitrator must conduct the proceedings in accordance with Rules of the Singapore International Arbitration Centre”.
\item \textsuperscript{57} Section 8(2) of the IAA; Art 6 of the Model Law.
\item \textsuperscript{58} \textit{KVC Rice Intertrade Co Ltd v Asian Mineral Resources Pte Ltd and another suit} [2017] SGHC 32 at [44]-[65].
\item \textsuperscript{59} \textit{KVC Rice Intertrade Co Ltd v Asian Mineral Resources Pte Ltd and another suit} [2017] SGHC 32 at [66]-[74].
\item \textsuperscript{60} Sections 13(3)(b) and 13(8) of the AA.
\end{itemize}
4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider ex parte requests?

Yes. The High Court has the power to issue interim measures, including injunctions, securing the amount in dispute, etc.61 This power is irrespective of whether the place of arbitration is located in Singapore.62

Courts are willing to hear ex parte requests insofar as those requests are urgent,63 although even when such a request is being made, the opponent should generally be given notice of the hearing at least 2 hours in advance.64 The practical difference between such a hearing and an inter partes hearing – despite both parties being represented – is that the opponent would generally not present any arguments in an ex parte hearing. An explanation will need to be furnished as to why the hearing has to be ex parte and/or if notice cannot be given to the counterparty.

In addition, the High Court has the power to issue permanent anti-suit injunctions to enforce an arbitration agreement seated in Singapore,65 whether the arbitration has already been concluded.66 Ordinarily, the Court will grant the injunction if it has been shown that the lawsuit was commenced in breach of an arbitration agreement, unless there are strong reasons not to grant the injunction. One example is where the foreign proceedings have progressed too far as a result of the applicant's delay in seeking the anti-suit injunction.67

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

Yes. The Singapore courts have held that "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" where Singapore is the seat of the arbitration.68 This obligation is subject to exceptions, including (a) where there is consent, express or implied; (b) where there is an order or leave of the court; (c) where it

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61 Section 31 of the AA and section 12A of the IAA.
62 Section 12A(1)(b) of the IAA.
63 See, e.g., O 69 A r 3(3) of the Rules of Court (which applies to proceedings under the IAA): "Where the case is one of urgency or an application under section 18, 19 or 29 of the Act for leave to enforce an award or foreign award, such application may be made ex parte on such terms as the Court thinks fit". There is similar language in O 69 r 3(3) (which applies to proceedings under the AA).
64 Supreme Court Practice Directions (https://epd.supremecourt.gov.sg/) at paras 41(1) and (2).
65 Section 18(2) read with para 14 of the First Schedule to the Supreme Court of Judicature Act (Cap 322). As regards arbitration agreements seated outside Singapore, this has not been tested in Singapore, but the High Court has remarked obiter that "It is only when strong reasons are present that the courts would intervene with a permanent anti-suit injunction to support foreign international arbitration. One possible situation might be where the forum in which the arbitration is to take place does not provide for effective interim measures in support of arbitration": R1 International Pte Ltd v Lonstroff AG [2014] SGHC 69 [55].
66 Sun Travels & Tours Pte Ltd v Hilton International Manage (Maldives) Pvt Ltd [2019] SGCA 10 [88].
67 Sun Travels & Tours Pte Ltd v Hilton International Manage (Maldives) Pvt Ltd [2019] SGCA 10 [68].
68 See Myanma Yaung Chi Oo Co Ltd v Win Win Nu and another and another suit [2009] 1 SLR(R) 945 at [82]: “As a matter of law, an obligation of confidentiality is to be implied in arbitration proceedings due to the private nature of such proceedings”; and AAY and others v AAZ [2011] 1 SLR 1093 at [55]: “... 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. While parties anticipating international arbitration would remain well advised to agree prospectively on the obligation of confidentiality, there is no need to do so where Singapore is to be the seat of the arbitration because confidentiality will apply as a substantive rule of arbitration law, not through the IAA or the AA, but from the common law.”
is reasonably necessary for the protection of the legitimate interests of an arbitration party; and (d) where the interests of justice or public interest requires disclosure.69

In addition, arbitration-related court proceedings in Singapore, parties are entitled to apply for the proceedings to be heard otherwise than in open court.70 Where proceedings are so heard, a party may additionally apply to the court to place restrictions on the reporting of the proceedings.71

4.5.2 Does it regulate the length of arbitration proceedings?
No. Singapore arbitration law does not contain provisions regulating the length of arbitration proceedings.

4.5.3 Does it regulate the place where hearings and/or meetings may be held?
No. Singapore arbitration law does not regulate where hearings and meetings may be held. On the contrary, it empowers the arbitral tribunal to hold the hearing at any place it considers appropriate, unless the parties agree otherwise.72

4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?
Yes. Singapore arbitration law empowers arbitral tribunals in domestic and international arbitrations to issue interim measures, such as security for costs, injunctions, etc.73

Beyond such empowerment, Singapore arbitration law does not regulate the conditions on which these interim measures can be issued. The only interim measure that Singapore law regulates to a limited extent is security for costs. Security for costs may not be ordered if the only reason is that (1) the claimant is an individual ordinarily resident outside Singapore; or (2) a corporation or an association incorporated or formed under the law of a country outside Singapore, or whose central management and control is exercised outside Singapore.74

4.5.5 Does it regulate the arbitrators’ right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?
Singapore does not extend its rules of evidence under the Evidence Act to arbitration proceedings.75 Instead, Singapore arbitration law empowers the arbitral tribunal to determine the admissibility, relevance, materiality and weight of any evidence.76 How the tribunal exercises that power is not regulated by Singapore arbitration law, save that Singapore law imposes a general obligation on the arbitral tribunal to give each of the parties a reasonable opportunity to present its case.77

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69 AAY and others v AAZ [2009] SGHC 142 at [64].
70 Section 22 of the IAA; section 56 of the AA.
71 Section 23 of the IAA; section 57 of the AA.
72 Art 20(2) of the Model Law.
73 Section 28 of the AA; section 12 of the IAA.
74 Section 28(3) of the AA; section 12(4) of the IAA.
75 Section 2(1) of the Evidence Act (Cap 97).
76 Art 19 of the Model Law and section 23 of the AA.
77 Article 18 of the Model Law; section 22 of the AA.
4.5.6 Does it make it mandatory to hold a hearing?

Singapore arbitration law obliges arbitral tribunals to hold hearings at an appropriate stage of the proceedings only if a party so requests. However, there is no such obligation if the parties have already agreed not to hold hearings.78

4.5.7 Does it prescribe principles governing the awarding of interest?

No. Singapore arbitration law empowers arbitral tribunals to award pre-award or post-award interest but does not prescribe the principles to be applied in that determination.79

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

No. Singapore arbitration law does not prescribe principles on the tribunal’s allocation of costs of the arbitration. However, this is subject to sections 39(2) and (3) of the AA, which provide that, for domestic arbitrations seated in Singapore, if parties agree before a dispute arises that they are to bear their own costs of the arbitration, that agreement would be void.

If the arbitral tribunal orders costs to be paid without quantifying such costs, the costs will be taxed by the Registrar of the Supreme Court (for domestic arbitrations)80 and the Registrar of the SIAC (for international arbitrations).81

4.6 Liability

4.6.1 Do arbitrators benefit from immunity to civil liability?

Arbitrators are not liable for negligence in respect of anything done or omitted to be done in their capacity as arbitrators; or any mistake of law, fact or procedure made in the course of arbitral proceedings or in the making of an arbitral award.82

Arbitral institutions are also generally immune from civil liability, except where there is bad faith.83

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

Singapore arbitration law does not give rise to concerns of potential criminal liability for any of the participants in an arbitration proceeding. However, the arbitral tribunal may (in appropriate circumstances) come under a duty to investigate allegations of corruption, insofar as such conduct could affect the enforceability of its award.84

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78 Article 24(1) of the Model Law; section 25(2) of the AA. In PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA [2005] SGHC 197, the Singapore High Court found at [52] that the setting-aside applicant failed to request for an oral hearing during the arbitration, so it was “not entitled now to complain that it was not given the chance to orally address any concerns that the Tribunal might have had after reading the submissions of both parties.”

79 See section 35 of the AA and section 20 of the IAA, which empower tribunals to award pre-award and post-award interest, but does not prescribe the principles to be applied in deciding whether and how to exercise that power.

80 See section 39 of the AA.

81 See section 21 of the IAA.

82 Section 20 of the AA; section 25 of the IAA.

83 Section 59 of the AA; section 25A of the IAA.

5. **The award**

5.1 **Can parties waive the requirement for an award to provide reasons?**

The general requirements of an award are that:85

1. the award has to be in writing and signed by the arbitral tribunal;
2. the award should state the reasons upon which it is based;
3. the date of the award and place of the arbitration shall be stated in the award; and
4. the award shall be delivered to each party.

Parties may waive the requirement for an award to provide reasons.86

5.2 **Can parties waive the right to seek the annulment of the award? If yes, under what conditions?**

There is no provision under the IAA with respect to whether the parties can waive the right to set aside the award, but this agreement will possibly be one factor the court takes into account when faced with a set aside application. This position has yet to be tested in Singapore.

At the time of updating this report, the Ministry of Law is conducting a public consultation on *inter alia* whether the IAA should allow parties to agree, after the award has been rendered, to waive or limit the annulment grounds under the Model Law and IAA.87

5.3 **What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?**

There are no atypical mandatory requirements which apply to awards rendered in Singapore: see the requirements in 5.1 above.

5.4 **Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?**

For domestic arbitrations, a party may appeal to the High Court on a question of law arising out of an award, so long as (i) the parties have not agreed to opt out of the appeal mechanism; and (ii) the parties have agreed to the appeal being brought, or leave of court has been obtained.88

The appellant or applicant must first exhaust any available arbitral process of appeal or review, and any available recourse under section 43 of the AA concerning the correction or interpretation of awards.89

The appellant or applicant must then bring the appeal or application within 28 days of the date he was notified of the result of the arbitral process of appeal or review or, if there is no such available process, of the date of the award.90

The Court may then only grant leave to appeal if it is satisfied that:91

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85  Section 38 of the AA; Article 31 of the Model Law.
86  Section 38(2) of the AA; Article 31(2) of the Model Law.
88  Section 49 of the AA.
89  Section 50(2) of the AA.
90  Section 50(3) of the AA.
91  Section 49(5) of the AA.
1. the determination of the question will substantially affect the rights of one or more of the parties;

2. the question is one which the arbitral tribunal was asked to determine;

3. on the basis of the findings of fact in the award, the decision of the arbitral tribunal on the question is obviously wrong; or the question is one of general public importance and the decision of the arbitral tribunal is at least open to serious doubt; and

4. 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.

For international arbitrations, the IAA currently does not provide an appeal process against awards made in international arbitrations. However, at the time of updating this report, the Ministry of Law of Singapore is conducting a consultation process on, inter alia, whether to allow parties to agree to “opt-in” to the appeal process to the High Court on a question of law arising out of an award.92

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

Recognition and enforcement of awards – both domestic and international – entail the following key steps:93

1. The party seeking to recognise or enforce an award may apply to court on an ex parte basis with an affidavit exhibiting the arbitration agreement, the original award, the details of the applicant(s) and respondent(s),94 and an indication of the extent to which the award has been complied with (if at all). This first step is a largely mechanical process.95 What this means is that this process “does not require a judicial investigation by the court enforcing the award under the IAA [and that] the examination that the court must make of the documents ... is a formalistic and not substantive one”.96

2. As the proceeding is ex parte, the applicant would be under a duty to provide full and frank disclosure.97 This includes disclosing to the court any circumstances which may affect the enforceability of the award (such as attempts to set aside the award or resist enforcement in other jurisdictions).

3. Where the court is satisfied the papers are in order, it will issue an order granting leave to enforce the award.

4. This order must then be served on the respondent by delivering a copy to him personally or by sending a copy to him at his usual or last known place of residence or business or in such other manner as the court may direct.98 Service of the order out of the jurisdiction is permissible without leave.99

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93 O 69A r 6 for proceedings under the IAA; O 69 r 14 for proceedings under the AA.

94 In particular, the name and the usual or last known place of residence or business of either party.

95 Aloe Vera of America, Inc v Asianic Food (S) Pte Ltd and another [2006] 3 SLR(R) 174 at [42].


97 AUF v AUG and other matters [2016] 1 SLR 859 at [164]-[165].

98 O 69A r 6(2) for proceedings under the IAA; O 69 r 14(2) for proceedings under the AA. For respondents that are body corporates, see O 69A r 6(6); O 69A r 14(6)-(7).

99 O 69A r 6(3) for proceedings under the IAA; O 69 r 14(3) for proceedings under the AA.
5. Within 14 days of service of the order, the respondent may apply to set aside the order.100

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

An application to set aside an order granting leave to enforce an award will result in the suspension of the applicant-creditor’s right to enforce the award until such application has been decided.101

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

If a foreign award has been annulled at the seat, it is likely that the Singapore courts will decline to enforce the award, though this has yet to be tested in Singapore courts.102

If setting-aside proceedings are pending in the courts of the foreign seat, the Singapore courts have the discretion to stay enforcement proceedings in Singapore.103 In determining whether to exercise that discretion, the Singapore courts will strike a balance between the competing interests, and come down on the side of an outcome that is the most just or least unjust. To this end, they will take into account inter alia whether the applicant is demonstrably pursuing a meritorious application in the seat, as well as the likely consequences of an adjournment, in particular its likely length of delay.104

6. Are foreign awards readily enforceable in practice?

Foreign awards – in the sense of arbitral awards made in pursuance of an arbitration agreement in the territory of a country other than Singapore – are enforceable in the same manner as an award made in Singapore, irrespective of whether that country is a party to the New York Convention.105

7. Funding Arrangements

7.1 Are there restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such restrictions?

Historically, Singapore common law recognised the tort of maintenance and champerty, and prohibited contingency or alternative fee arrangements or third-party funding on this basis. However, in 2017, Singapore enacted legislation to abolish the tort.106

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100 O 69A r 6(4) for proceedings under the IAA; O 69 r 14(4) for proceedings under the AA.
101 O 69A r 6(4) for proceedings under the IAA; O 69 r 14(4) for proceedings under the AA.
102 See PT First Media TBK (formerly known as PT Broadband Multimedia TBK) v Astro Nusantara International BV and others and another appeal [2014] 1 SLR 372 at [77], where the Court of Appeal, despite eventually leaving the question open, indicated a preference for the view that awards that had been set aside cannot be enforced: “While the wording of Art V(1)(e) of the New York Convention and Art 36(1)(a)(v) of the Model Law arguably contemplates the possibility that an award which has been set aside may still be enforced, in the sense that the refusal to enforce remains subject to the discretion of the enforcing court, the contemplated erga omnes effect of a successful application to set aside an award would generally lead to the conclusion that there is simply no award to enforce. What else could it mean to set aside an award? If this avenue of recourse would only ever be of efficacy in relation to enforcement proceedings in the seat court, then it seems to have been devised for little, if any, discernible purpose. As such, we do not think that in principle, even the wider notion of “double-control” can encompass the same approach as has been adopted by the French courts. The refusal to enforce awards which have not been set aside at the seat court may therefore constitute one of the outer-limits of “double-control”. However, as this specific issue is not directly engaged in the present appeal, we offer no further comment beyond these tentative thoughts.” See also Prometheus Marine Pte Ltd v King, Ann Rita and another appeal [2017] SGCA 61 [46].
103 Section 31(5) of the IAA.
104 Man Diesel Turbo SE v I.M. Skaugen Marine Services Pte Ltd [2018] SGHC 132 at [46]-[47].
105 Section 46(3) of the AA; section 29 of the IAA.
106 Section 5A of the Civil Law Act (Cap 43).
The abolition of the tort means that there is no longer tortious liability for engaging in contingency or conditional fee arrangements or otherwise third-party funding. Third party funding contracts for international arbitration proceedings (and their related court or mediation proceedings) are now enforceable provided that the funder meets the qualification requirements under statute.\textsuperscript{107}

On the other hand, Singapore-based local and foreign lawyers continue to be prohibited from entering into contingency or conditional fee arrangements for Singapore-related cases under prevailing professional conduct rules.\textsuperscript{108} Nevertheless, there are promising signs that this prohibition will soon be lifted to align more closely with international practice and users’ expectations.\textsuperscript{109}

8. Reform in Singapore

8.1 Is there likely to be any significant reform of the arbitration law in the near future?

At the time of updating this report, the Singapore Ministry of Law is conducting a public consultation on a number of proposed amendments to the IAA.\textsuperscript{110} Singapore reforms its arbitration legislation every few years to ensure that the legislation keeps up with international best practices and the expectations of users.

Two of these amendments are directed at upholding party autonomy:

1. an amendment to allow a party to appeal to the High Court on a question of law arising out of an award made in the proceedings, provided that the parties have agreed to opt in to the appeal mechanism; and
2. an amendment to allow parties to request, by agreement, the arbitral tribunal to decide on jurisdiction as a preliminary question.

Two other of these amendments seek to facilitate the arbitration process further:

1. an amendment to establish a default process of appointing arbitrators in arbitrations with more than two parties; and
2. an express provision for the powers of the High Court and the arbitral tribunal to enforce duties of confidentiality.

In addition, the Ministry is seeking views on the following third-party proposed amendments:

1. to allow parties to agree, after the award has been rendered, to waive or limit the annulment grounds under the Model Law and IAA; and
2. to empower the High Court to issue orders on the costs of arbitral proceedings, following a successful application to set aside an award (in whole or in part), whether arising from a domestic or international arbitration.

It can therefore be expected that the next tranche of reforms to Singapore arbitration law will focus on these proposed amendments.

The Singapore Ministry of Law is also conducting a public consultation on several proposed legislative amendments to allow conditional fee arrangements to be entered into in prescribed dispute resolution proceedings, including arbitration proceedings, certain proceedings in the SICC, and mediation proceedings.

\textsuperscript{107} Section 5B of the Civil Law Act (Cap 43); Civil Law (Third-Party Funding) Regulations 2017.

\textsuperscript{108} Section 107(1)(b) of the Legal Profession Act (Cap 161) and Rule 18 of the Legal Profession (Professional Conduct) Rules 2015.

\textsuperscript{109} See section 8.1 below.

The amendments – which are likely to be welcomed by the arbitration community – will amend the professional conduct rules and impose certain safeguards to regulate conditional fee arrangements. For example, the enactments will require (a) the client to have been fully informed of the nature and operation of the arrangement and confirm that he has been told of his right to seek independent legal advice before entering into the agreement; and (b) that the arrangement contains a “cooling-off period” during which the client may terminate the arrangement by written notice. It is anticipated that these enactments will be passed in the near future to align Singapore law and practice to international expectations, particularly in the case of sophisticated global users of arbitration, who expect to be able to enter into alternative fee arrangements with their lawyers in Singapore.

Separately, the Law Reform Committee of the Singapore Academy of Law had also sought feedback in 2018 on:

1. whether the High Court should generally award costs on an indemnity basis against an unsuccessful applicant in setting aside proceedings, or an unsuccessful respondent who had applied for refusal of enforcement of an award; and
2. whether proceedings to enforce an arbitration award, where contested, should be fixed at first instance before a High Court Judge instead of an Assistant Registrar.

The results of the feedback have not been released to the public at the time of this report.

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