International
Comparative
Legal Guides

International Arbitration 2021

A practical cross-border insight into international arbitration work

18th Edition

Featuring contributions from:

Ashurst LLP
Attorneys at law Ratiolex Ltd
Bae, Kim & Lee LLC
Baker McKenzie
Bär & Karrer Ltd.
BDO LLP
Boss & Young, Attorneys-at-Law
Cadwalader, Wickersham & Taft LLP
Cartier Meyniel Schneller
Charles Russell Speechlys LLP
Costa Tavares Paes Advogados
Dentons Eric Silwamba Jalasi and Linyama
Diana Hamade Attorneys at Law
Dr. Colin Ong Legal Services
ECC
Fatur Menard Law Firm
Georgiev, Todorov & Co. Law Offices
GrahamThompson
Gregoriou Law Firm
GST LLP
HFW
Kachwaha and Partners
Kanokanga & Partners
Kennedys
LawFed BRSA
Legance – Avvocati Associati
Maples Group
Montezuma Abogados
Mori Hamada & Matsumoto
Paul, Weiss, Rifkind, Wharton & Garrison LLP
Pelinari & Pelinari Law Firm
Russian Arbitration Center at the Russian Institute of Modern Arbitration
SLV Legal
TripleOKLaw Advocates, LLP
Van Doorne N.V.
Victoria Associates
Walser Attorneys at Law Ltd.
Weber & Co.
Williams & Connolly LLP
Wilmer Cutler Pickering Hale and Dorr LLP
Zellberg Advokatbyrå AB

CDR Commercial Dispute Resolution
ICLG.com

Preface

Expert Analysis Chapters

Asia Pacific

Central and Eastern Europe and CIS

Western Europe

Latin America

Middle East / Africa

North America

Singapore

Paul Aston

Suzanne Meiklejohn

HFW

1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of your jurisdiction?

The only formal requirement for an arbitration agreement to be enforceable in Singapore is that it be in writing (it need not be signed). Pursuant to Section 2A of the International Arbitration Act ("IAA"), an arbitration agreement is considered to be in writing if its content is recorded in any form (this includes electronic communication such as an exchange of emails). This is the case regardless of whether or not the underlying agreement or contract has been "*concluded orally, by conduct or by other means*". The terms of the arbitration agreement, like any other agreement, must also be certain if the arbitration agreement is to be valid. However, the court will take a relatively lenient view when considering arbitration agreements in order to give effect to them where at all possible.

Section 2A of the IAA (which was amended in 2012) effectively adopts Option 1 of Article 7 of the 2006 Amendments to the 1985 UNCITRAL Model Law on International Commercial Arbitration ("MAL"). Accordingly, if two parties verbally agree to refer a dispute to arbitration and they document this by way of an audio recording, this now falls within the IAA's definition of an arbitration agreement.

Pursuant to Section 2A of the IAA, there are also specific situations where an effective arbitration agreement is deemed constituted, such as when a party in legal proceedings "*asserts the existence of an arbitration agreement in a pleading, statement of case or any other document in circumstances where the assertion calls for a reply and the assertion is not denied*".

1.2 What other elements ought to be incorporated in an arbitration agreement?

An arbitration agreement may:

a. prescribe the scope of disputes to be referred to arbitration (such as all disputes arising out of or in connection with the relevant contract);
b. state whether the arbitration is to be administered by an arbitral institution, such as the Singapore International Arbitration Centre ("SIAC") or the Singapore Chamber of Maritime Arbitration ("SCMA");
c. state the seat of the arbitration; and
d. specify a law for the arbitration clause (as distinct from the choice of substantive law governing the contract; if the arbitration agreement does not contain this, usually the default position will be the law of the seat).

The parties may also wish to state the number of arbitrators and the language in which the arbitration is to be conducted. In addition, they may specify the venue of the arbitration hearing if this is different from the seat.

1.3 What has been the approach of the national courts to the enforcement of arbitration agreements?

The Singapore courts take a pro-enforcement approach to arbitration agreements. On the legal front, Singapore has adopted an open regime for international arbitration by allowing counsel from all jurisdictions to freely participate in arbitral proceedings. Arbitrators enjoy tax incentives. Courts in Singapore have consistently and strongly supported international arbitration, party autonomy and the finality of arbitral awards. Singapore's judiciary is viewed as one that understands and encourages commercial enterprise and is independent from influence. The Government has been equal to the task by ensuring that Singapore's MAL-based arbitration legislation is up to date with international jurisprudence.

Neutrality is a key factor for an international arbitration, and more so in an investor-state arbitration. The removal of potential domestic court bias and the non-existence of any geopolitical influences that may plague other jurisdictions in the region set Singapore apart as a unique neutral option.

Singapore is also a signatory to the New York Convention, which guarantees enforceability of awards rendered in over 150 countries. Moreover, parties' perception of the quality and fairness of the arbitral process in Singapore makes it more likely that they will comply with an award voluntarily, as has been the case with awards rendered within Singapore-seated commercial arbitrations.

Singapore also passed the Supreme Court of Judicature (Amendment) Bill in 2018 to allow the Singapore International Commercial Court ("SICC") to preside over certain matters under the scope of the IAA. This reflects Singapore's pro-arbitration approach, as the bill clarified that the SICC would have the same jurisdiction as the High Court to hear proceedings relating to international commercial arbitration. This allows parties to benefit from the expertise of international judges who sit in the SICC.

The Singapore court continues to adopt a pro-arbitration stance, as seen in various decisions where the court held that:

- asymmetric arbitration agreements are valid and enforceable;
- arbitration agreements remain operative despite earlier litigation; and
- court proceedings should be stayed even though the applicant was not a party to an arbitration agreement.

The Singapore courts apply and have adopted the expansive and purposeful approach of the English Court in *Fiona Trust & Holding Corp. v Privalov* [2007] UKHL 40 in determining which types of dispute are covered by the wording of arbitration clauses.

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration proceedings in your jurisdiction?

The principal statute governing the enforcement of arbitration proceedings in Singapore is the IAA (Cap 143A), which incorporates the MAL and the New York Convention. Two amendments to the IAA came into force on 1 December 2020 by way of the International Arbitration (Amendment) Act; these amendments provide for a default procedure for appointing arbitrators in multi-party disputes, and expressly vest powers in the Singapore court and arbitral tribunals to enforce confidentiality obligations (the latter of which was in response to concerns over confidentiality within the context of hearings conducted virtually).

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do they differ?

Domestic arbitration in Singapore is governed by the Arbitration Act (Cap 10) ("AA"). Generally, an arbitration is "international" if one of the parties to the arbitration agreement has its place of business outside of Singapore or the subject-matter of the dispute or place of performance of the contract is outside of Singapore. The key differences between the IAA and the AA are as follows:

- **Stay of Proceedings**. The court has discretion under the AA to stay proceedings in favour of arbitration, whereas under the IAA it is mandatory for the court to make an order staying the proceedings if they are brought in breach of the arbitration agreement.
- **Powers of the Arbitrator**. The IAA gives arbitrators a much wider range of powers and control over the proceedings and over the parties themselves compared to the AA.
- **Appeals against Awards and Grounds for Setting Aside Awards**. The AA provides for parties' rights of appeal on questions of law and gives the court the power to set aside an award in situations where the arbitral tribunal misconducted itself in the proceedings. The IAA does not provide for any right of appeal against an arbitration award on points of law and only allows a party to apply to have an award set aside if the situation falls within several narrow grounds in addition to those set out in Article 34(2) of the MAL, such as the existence of fraud or corruption, a breach of the rules of natural justice and public policy considerations.

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?

The IAA incorporates and gives effect to the MAL with very few amendments, which are expressly contained in the IAA.

2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in your jurisdiction?

The IAA contains the following mandatory rules for the conduct of arbitration in Singapore:

- The application of the Limitation Act Cap 163 and the Foreign Limitation Periods Act 2012.
- The requirement for the arbitration agreement to be in writing.
- The court's power to order a stay of court proceedings in favour of arbitration proceedings.
- Unless the number of arbitrators is determined by the parties, or by any specifically agreed arbitral rules, an arbitral tribunal shall consist of a sole arbitrator.
- The competence of the arbitral tribunal to rule on its own jurisdiction.
- Any dispute that 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.
- The power of the arbitral tribunal to make orders or give directions for security for costs, discovery of documents and interrogatories, giving of evidence by affidavit, preservation or sale of any property that is or forms part of the subject-matter of the dispute, samples to be taken from or observations or experiments conducted on any property that is or forms part of the subject-matter of the dispute, preservation or interim custody of evidence, security for the amounts in dispute, ensuring that any award is not rendered ineffectual by the dissipation of assets by a party, interim injunctions or any other interim measure, to award any remedy or relief that could have been ordered by the High Court if the dispute had been subject to civil proceedings in that Court, and to award simple or compound interest.
- A provision of rules of arbitration agreed to or adopted by the parties shall apply and be given effect.
- An arbitral award may, by leave of the High Court, be enforced in the same manner as a judgment or an order and judgment may be entered in terms of the award.
- An award made by the arbitral tribunal pursuant to an arbitration agreement is final and binding on the parties and on any persons claiming through or under them and may be relied upon by any of the parties by way of defence, set-off or otherwise in any proceedings in any court of competent jurisdiction.
- The court's power to set aside an award.

3 Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of your jurisdiction? What is the general approach used in determining whether or not a dispute is "arbitrable"?

The IAA provides that any dispute that 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. There is no exhaustive list of disputes that are not arbitrable but, generally speaking, disputes that involve a public interest element will not be, such as patent registration disputes or company winding-ups.

3.2 Is an arbitral tribunal permitted to rule on the question of its own jurisdiction?

Yes. An arbitral tribunal has the power to rule on its own jurisdiction. The Singapore High Court may review an arbitral tribunal's decision on its own jurisdiction (both positive and negative).

3.3 What is the approach of the national courts in your jurisdiction towards a party who commences court proceedings in apparent breach of an arbitration agreement?

The court will order a stay of the court proceedings if they are

commenced in breach of an arbitration agreement. The court may only refuse to grant a stay if the arbitration agreement is null and void, inoperative or incapable of being performed. Both arbitrators and the court can order, in appropriate cases, anti-suit injunctions where, in breach of an arbitration agreement, proceedings are commenced in a non-contractual jurisdiction in breach of the contractually agreed arbitration clause.

3.4 Under what circumstances can a national court address the issue of the jurisdiction and competence of an arbitral tribunal? What is the standard of review in respect of a tribunal's decision as to its own jurisdiction?

Where a tribunal has ruled on a plea as a preliminary issue that it has jurisdiction, or on a plea at any stage of the arbitral proceedings that it has no jurisdiction, a party may within 30 days appeal that decision to the High Court.

In a case before the Singapore High Court in 2016 between *Jiangsu Overseas Group Co Ltd v Concord Energy Pte Ltd* before Steven Chong J (as he then was), the judge laid down the standard of review to be exercised by the Court when considering an application to set aside arbitration awards based on Section 24 of the IAA read together with Article 32(2) of the MAL. In this case, Jiangsu submitted that they were not a party to the contracts, but the tribunal held that they had been and therefore the arbitration agreement was binding. The judge held that it must always be open for a party seeking to set aside an arbitration award to argue that no arbitration agreement was formed between them. Secondly, on such applications, the Court undertakes a *de novo* hearing of the arbitral tribunal's decision on its decision on jurisdiction. The existence of the arbitration agreement and the existence of the contract "*stand or fall*" together and the Court can determine both issues on the basis of a full hearing.

3.5 Under what, if any, circumstances does the national law of your jurisdiction allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

The courts in Singapore are able to assume jurisdiction over individuals or entities that are not themselves party to an agreement to arbitrate pursuant to their inherent case management jurisdiction. In *Gulf Hibiscus Ltd v Rex International Holding Ltd and another* [2017] SGHC 210, the High Court conditionally stayed court proceedings in favour of arbitration despite the application being made by a non-party to the arbitration agreement.

Rather than focusing on the parties at hand, the Court based its decision on the scope of the arbitration clause and whether the local proceedings were connected enough with the main dispute (which fell within the scope of the arbitration clause).

3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in your jurisdiction and what is the typical length of such periods? Do the national courts of your jurisdiction consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?

The Limitation Act Cap 163 and the Foreign Limitation Periods Act 2012 apply to the commencement of arbitration in the same way that they apply to actions commenced in court. Claims in both contract and tort are subject to a six-year limitation period from the date on which the cause of action accrued. If the law of another jurisdiction fails to be applied, the laws governing limitation of actions from that jurisdiction shall be applied.

3.7 What is the effect in your jurisdiction of pending insolvency proceedings affecting one or more of the parties to ongoing arbitration proceedings?

Under Section 262(3) of the Singapore Companies Act, ongoing arbitration proceedings would be stayed upon a company being wound up in Singapore. Singapore has also just passed various amendments to its Companies Act by introducing the Tenth Schedule, which incorporates the UNCITRAL Model Law on Cross-Border Insolvency. This provides for proceedings (including arbitration proceedings) to be stayed in the event of a cross-border insolvency.

4 Choice of Law Rules

4.1 How is the law applicable to the substance of a dispute determined?

The Singapore courts have adopted differing approaches to determining the substantive law applicable to arbitration in recent years, which can be seen in the contrasting views taken in *FirstLink Investments Corp Ltd v GT Payment Pte Ltd* [2014] SGHCR 12 and *BCY v BCZ* [2017] 3 SLR 357.

Both cases endorse the three-step approach (as first set out in *Sulamerica Cia Nacional de Seguros SA v Enesa Engelharia SA* [2013] 1 WLR 102) that the governing law of an arbitration agreement is determined by:

- the express choice of the parties;
- the implied choice of the parties; and
- the system of law to which the arbitration agreement has the closest and most real connection.

However, the two cases differ as to deciding how the implied choice of the parties is to be decided (i.e. limb 2 of the test in *Sulamerica*). Whereas *FirstLink* held that the parties' implied choice of law should be the same as the seat of the arbitration, in *BCY v BCZ*, the Singapore court found that it should be the same as the substantive law governing the underlying contract.

4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

The law chosen by the parties will always prevail in arbitration in Singapore. If parties have neither expressly nor impliedly expressed a choice of law governing the arbitration clause, the procedural law of the arbitration will be that of Singapore, if that is where the arbitration is seated.

4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

Singapore law treats these as procedural issues, which therefore fall to be determined in accordance with Singapore law.

5 Selection of Arbitral Tribunal

5.1 Are there any limits to the parties' autonomy to select arbitrators?

The parties have a wide autonomy in their selection of arbitrators, including as to the number of arbitrators, whether there is to be a chairman or an umpire, the arbitrators' qualifications and the method of appointment.

5.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

Yes. If the parties fail to agree on the number of arbitrators, the tribunal will consist of a sole arbitrator. If a tribunal consists of three arbitrators and the parties fail to agree on the appointment of the third arbitrator within 30 days, the appointment shall be made on application by a party by the appointing authority, being the President of the Court of Arbitration of the SIAC.

IAA Section 9B now provides for a default procedure within the context of multi-party arbitration, and has been in effect since 1 December 2020 under the International Arbitration (Amendment) Act.

5.3 Can a court intervene in the selection of arbitrators? If so, how?

A party may request that the court take the necessary action to appoint an arbitrator if either party fails to do so. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator; and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

5.4 What are the requirements (if any) imposed by law or issued by arbitration institutions within your jurisdiction as to arbitrator independence, neutrality and/or impartiality and for disclosure of potential conflicts of interest for arbitrators?

An arbitrator is required to treat the parties with equality and to be independent and impartial.

Arbitrators are required to disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. An arbitrator, from the time of their appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them.

6 Procedural Rules

6.1 Are there laws or rules governing the procedure of arbitration in your jurisdiction? If so, do those laws or rules apply to all arbitral proceedings sited in your jurisdiction?

Parties are free to agree on the procedural rules for their arbitration, or to agree on the application of the institutional rules that will be given effect, provided they are inconsistent with the MAL or with Part II of the IAA.

6.2 In arbitration proceedings conducted in your jurisdiction, are there any particular procedural steps that are required by law?

Other than as set out above, the procedure will be that of the rules of the arbitral body chosen; and for *ad hoc* arbitration, as per the provisions of the IAA and the large amount of discretion given to the tribunal to conduct the reference as they see fit.

6.3 Are there any particular rules that govern the conduct of counsel from your jurisdiction in arbitral proceedings sited in your jurisdiction? If so: (i) do those same rules also govern the conduct of counsel from your jurisdiction in arbitral proceedings sited elsewhere; and (ii) do those same rules also govern the conduct of counsel from countries other than your jurisdiction in arbitral proceedings sited in your jurisdiction?

Counsel must behave in a manner consistent with the rules of professional conduct in Singapore and of the jurisdiction in which they are admitted (where applicable) and, in general, with best international practice (as exemplified by, for example, the 2013 IBA Guidelines on Party Representation).

6.4 What powers and duties does the national law of your jurisdiction impose upon arbitrators?

The arbitral tribunal has express powers under the IAA to make orders or give directions for: security for costs; discovery of documents and interrogatories; giving of evidence by affidavit; preservation or sale of any property that is or forms part of the subject-matter of the dispute; samples to be taken from or observations or experiments conducted on any property that forms part of the subject-matter of the dispute; preservation or interim custody of evidence; security for the amounts in dispute, ensuring that any award is not rendered ineffectual by the dissipation of assets by a party; interim injunctions or any other interim measure; awarding any remedy or relief that could have been ordered by the High Court if the dispute had been subject to civil proceedings in that Court; and awarding simple or compound interest.

6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in your jurisdiction and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in your jurisdiction?

There are no rules restraining the appearance of lawyers from other jurisdictions from acting in arbitration proceedings in Singapore.

However, it should be noted that only Singapore-qualified lawyers from Singapore law practices can appear before the High Court for IAA-related matters. Foreign registered lawyers can apply on a case-by-case basis to represent their client in the SICC.

6.6 To what extent are there laws or rules in your jurisdiction providing for arbitrator immunity?

Arbitrators are immune from liability for negligence in respect of anything done or omitted to be done in the capacity of arbitrator, and for any mistake in law, fact or procedure made in the course of arbitral proceedings or in the making of an arbitral award.

6.7 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

Yes. The Singapore courts have jurisdiction to make interim orders including injunctions, preservation of evidence or assets if the arbitral tribunal either does not have the power to make such an order, or if, at the time, is unable to act effectively. The Singapore courts also have jurisdiction to subpoena witnesses to testify or produce documents in an arbitration.

7 Preliminary Relief and Interim Measures

7.1 Is an arbitral tribunal in your jurisdiction permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitral tribunal seek the assistance of a court to do so?

An arbitral tribunal has jurisdiction to award preliminary and interim relief set out at question 6.4 above. It does not require the assistance of a court to do so.

7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

Yes. The Singapore courts have jurisdiction to make interim orders including injunctions, preservation of evidence or assets if the arbitral tribunal either does not have the power to make such an order, or if, at the time, is unable to act effectively. The Singapore courts also have jurisdiction to subpoena witnesses to testify or produce documents in an arbitration. Interim relief granted by the Singapore courts should not impact on the jurisdiction of the arbitral tribunal. An arbitral tribunal may make an order expressly relating to the same subject-matter as the court's order, in which case the court's order shall cease to have any effect to the extent that it is dealt with by the order of the arbitral tribunal.

7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

The Singapore courts are supportive of arbitration and, in practice, would be mindful of supporting but not interfering with arbitration within the context of applications for interim relief.

7.4 Under what circumstances will a national court of your jurisdiction issue an anti-suit injunction in aid of an arbitration?

The Singapore courts' support of arbitration extends to the granting of anti-suit injunctions to restrain the pursuit of foreign proceedings in breach of a Singapore arbitration agreement.

7.5 Does the law of your jurisdiction allow for the national court and/or arbitral tribunal to order security for costs?

Yes, both arbitral tribunals and the Singapore courts have jurisdiction to order security for costs.

7.6 What is the approach of national courts to the enforcement of preliminary relief and interim measures ordered by arbitral tribunals in your jurisdiction and in other jurisdictions?

An order for preliminary relief or an interim measure, whether ordered by a tribunal in Singapore or in another jurisdiction, is generally enforceable with leave from the Singapore courts, in the same manner as an order or direction of the court that has the same.

The Singapore courts consistently comply with their obligation to support, rather than interfere with, the arbitral process, and a party seeking the enforcement of an order for preliminary relief or an interim measure can expect the court to approach their application with this policy in mind.

While an emergency arbitrator order is legally enforceable in certain jurisdictions, it does not enjoy the status and near global enforceability of an arbitral award under the New York Convention. Given that both the New York Convention and the MAL are silent on the definition of an arbitral award, it falls to each jurisdiction's domestic legislation to set out what it would recognise as an award that it is required to enforce under the New York Convention.

Many jurisdictions require an award to be "final and binding" on the substance of the dispute between the parties before it may be recognised and enforced. An emergency arbitrator's order, however, is intended to deal only with the application for interim relief and, under the SIAC Rules, will cease to be binding unless the tribunal is constituted within 90 days of the date of the order. This leads to some doubt as to whether an emergency arbitrator order is enforceable in most jurisdictions.

Singapore has passed amendments to the IAA to provide for express recognition of an emergency arbitrator's orders. The Singapore IAA has achieved this by expanding the definition of "arbitral tribunal" in the Act to include an emergency arbitrator.

8 Evidentiary Matters

8.1 What rules of evidence (if any) apply to arbitral proceedings in your jurisdiction?

The arbitral tribunal is not bound by the strict rules of evidence that apply in proceedings before the courts (except for the rules relating to privilege). Subject to the agreement of the parties and any institutional rules, the tribunal can decide what evidence to admit and then how that evidence should be weighed in reaching its findings of fact. It is not uncommon for parties to adopt the IBA Rules on the Taking of Evidence in International Arbitration.

For example, in *BNX v BOE and another matter* [2017] SGHC 289, the High Court held that the rule against hearsay evidence (pursuant to Section 62 of the Evidence Act (Cap 97, 1997 Rev Ed)) does not apply to arbitration proceedings.

8.2 What powers does an arbitral tribunal have to order disclosure/discovery and to require the attendance of witnesses?

An arbitration tribunal has the powers conferred by the arbitration agreement and the applicable arbitration rules as agreed by the parties.

The arbitral tribunal is also granted general powers to order: discovery of documents and interrogatories; the giving of evidence by affidavit; preservation or sale of any property that is or forms part of the subject-matter of the dispute; samples to be taken from or observations or experiments conducted on any property that is or forms part of the subject-matter of the dispute; preservation or interim custody of evidence; interim injunctions or any other interim measure; the awarding of any remedy or relief that could have been ordered by the High Court if the dispute had been subject to civil proceedings in that Court; and the awarding of simple or compound interest.

8.3 Under what circumstances, if any, can a national court assist arbitral proceedings by ordering disclosure/discovery or requiring the attendance of witnesses?

The Singapore courts may subpoena a witness to testify or subpoena a party to produce documents.

8.4 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal and is cross-examination allowed?

Parties are free to agree whether there should be oral or written evidence in arbitral proceedings. Otherwise, the tribunal may decide whether or not a witness or party will be required to provide oral evidence and, if so, the manner in which that should be done and the questions that should be put to, and answered by, the respective parties.

Unless otherwise agreed, the tribunal also has the power to direct that a particular witness or party may be examined on oath or affirmation, and may administer the necessary oath or affirmation. There is no strict requirement that oral evidence be provided on oath or affirmation; in practice, witnesses typically do so.

Cross-examination of witnesses in arbitration is permitted.

The tribunal does not have the power to compel the attendance of a witness. However, a party can apply to the court to order the attendance of a witness in order to give oral testimony (or to produce documents).

In addition, unless the parties agree otherwise, the tribunal is empowered to appoint experts to report to it, and the parties are entitled to submit written comments on any such report.

The conduct of lawyers with regard to the preparation of witness testimony is regulated by the rules of professional conduct in Singapore and of the jurisdiction in which that lawyer is admitted to practise.

Arbitrators can agree all procedural matters, including how evidence is to be given. This includes evidence to be given by video link. A number of arbitrations and procedural hearings have taken place in Singapore this year virtually, in part due to COVID-19 restrictions.

8.5 What is the scope of the privilege rules under the law of your jurisdiction? For example, do all communications with outside counsel and/or in-house counsel attract privilege? In what circumstances is privilege deemed to have been waived?

A document is privileged if it is a confidential communication: (1) between a lawyer and their client for the purposes of obtaining legal advice; or (2) that came into existence for the dominant purpose of actual, pending or contemplated litigation, which includes arbitration. Privilege may be waived if all or part of a document is disclosed in the proceedings.

9 Making an Award

9.1 What, if any, are the legal requirements of an arbitral award? For example, is there any requirement under the law of your jurisdiction that the award contains reasons or that the arbitrators sign every page?

An arbitral award in Singapore must be made in accordance with Article 31 of the MAL. An arbitral award must therefore be made in writing and signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated. The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given. Under the SIAC's Expedited Procedure, for example, it is expressly provided that the tribunal may give a summary of the reasons for the award, unless the parties agree that no reasons are to be given.

9.2 What powers (if any) do arbitral tribunals have to clarify, correct or amend an arbitral award?

Under Section 19B(2) of the IAA, except as provided in Articles 33 and 34(4) of the MAL, upon an award being made, the arbitral tribunal shall not vary, amend, correct, review, add to or revoke the award. The SIAC Rules contain an express rule providing that within 30 days of receipt of an award, a party may request the tribunal to correct in the award any error in computation, any clerical or typographical error or any error of a similar nature. If the tribunal considers the request to be justified, it shall make the correction within 30 days of receipt of the request. The tribunal may correct any error of the type referred to in Rule 33.1 on its own initiative within 30 days of the date of the award. Within 30 days of receipt of an award, a party may also request that the tribunal give an interpretation of the award. If the tribunal considers the request to be justified, it shall provide the interpretation in writing within 45 days after receipt of the request.

10 Challenge of an Award

10.1 On what bases, if any, are parties entitled to challenge an arbitral award made in your jurisdiction?

International arbitration awards made in Singapore are final and binding on the parties and are not subject to a right of appeal (save in respect of rulings on jurisdiction, for which see further below).

Under the IAA, parties may apply to the courts to set aside arbitral awards in certain limited and exhaustive situations.

Applications for arbitration awards to be set aside can be granted if one of the limited grounds in Article 34(2) of the MAL is met, the most relevant of which are:

i. "*the party making the application was … unable to present his case*";
ii. "*the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration*"; and
iii. "*a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced*".

The case of *AKN v ALC* [2015] 4 SLR 488 helpfully reiterated Singapore's pro-arbitration stance, where the Singapore courts will only set aside arbitral awards in exceptional cases.

10.2 Can parties agree to exclude any basis of challenge against an arbitral award that would otherwise apply as a matter of law?

The parties may not exclude the right to challenge an award on the limited procedural grounds set out above.

10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

No, they cannot.

10.4 What is the procedure for appealing an arbitral award in your jurisdiction?

Section 10 of the IAA provides for a right of appeal at any stage of the arbitral proceedings on positive or negative rulings by the tribunal on its own jurisdiction, and sets out the relevant procedure.

The appeal must be made to the Singapore High Court (by originating summons) under Article 16(3) of the MAL within 30 days of the appealing party having received notice of the tribunal's ruling.

11 Enforcement of an Award

11.1 Has your jurisdiction signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

Yes, Singapore has ratified the New York Convention.

11.2 Has your jurisdiction signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

Please see question 11.1.

11.3 What is the approach of the national courts in your jurisdiction towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

The courts are generally pro-recognition and enforcement of awards. The enforcing party may seek the assistance of the High Court, which will generally, with leave of the court, enter judgment in the terms of the award.

11.4 What is the effect of an arbitration award in terms of *res judicata* in your jurisdiction? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

A party is prohibited by the doctrine of *res judicata* from seeking to re-litigate an issue that is already the subject of a final and binding arbitration award. An attempt to re-open the same issue in further court proceedings would be an abuse of the court process. Issue estoppel arises even if the first proceeding is an arbitration.

As a matter of Singapore law, there are three *res judicata* principles: cause of action estoppel; issue estoppel; and the "extended" doctrine of *res judicata*. The "extended" doctrine of *res judicata*, which in Singapore is a form of the abuse of process doctrine, refers to a situation where a party seeks to argue points that were not previously determined by a court or tribunal because they were not brought to the court or tribunal's attention even though they could or should have been. There is case authority for the proposition that these principles apply equally in arbitration as in court.

11.5 What is the standard for refusing enforcement of an arbitral award on the grounds of public policy?

The court applies the public policy ground sparingly. The most obvious ground on which the court will refuse enforcement on the public policy ground is where the award has been procured by fraud or by criminal, oppressive or otherwise unconscionable behaviour. Before making any such finding, the court will require cogent evidence of the impugned conduct.

12 Confidentiality

12.1 Are arbitral proceedings sited in your jurisdiction confidential? In what circumstances, if any, are proceedings not protected by confidentiality? What, if any, law governs confidentiality?

Yes. Unless otherwise agreed, no party may publish, disclose or communicate any information relating to the arbitral proceedings under an arbitration agreement or an award made in those arbitral proceedings. The International Arbitration (Amendment) Act, which enacted amendments to the IAA with effect from 1 December 2020, expressly vested further powers in the Singapore court and Singapore tribunals to make orders concerning confidentiality.

It should be noted that the duty of confidentiality extends only to the parties, and not to the arbitrators or any other participants in the arbitration. In practice, many institutional rules contain provisions dealing with confidentiality that require participants, including arbitrators, to treat information relating to the arbitration as confidential.

In the case of court proceedings relating to arbitration, the presumption is that these are not to be heard in open court, in which case they will retain a high degree of confidentiality. However, the court may order the proceedings to be heard in open court on the application of any party or if, in any particular case, the court is satisfied that those proceedings ought to be heard in open court. In addition, where a judgment is of major legal interest, the court must direct that reports of the judgment may be published (with concealment of matters reasonably requested by the party).

12.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

Not generally; however, see the answer to question 12.1.

13 Remedies / Interests / Costs

13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

No, tribunals can in theory grant the same remedies as the court.

13.2 What, if any, interest is available, and how is the rate of interest determined?

Tribunals have a broad discretion to award pre- and post-award interest, including whether to award simple or compound interest, the applicable rate(s), start date(s) and rest periods, and to award interest on costs.

13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

The tribunal also has a broad discretion to award costs. In so doing, the tribunal is not obliged to follow the scales and practices adopted by the court on taxation; however, the tribunal must only allow costs that are reasonable having regard to the circumstances of the case. Costs for these purposes include the costs of the parties' professional advisors and experts, the tribunal's fees and expenses and other costs of the hearing, and may include those of any arbitral institution.

13.4 Is an award subject to tax? If so, in what circumstances and on what basis?

Payment of tax is a personal matter for the party to whom damages are paid and will depend on, amongst other things, the jurisdiction of incorporation of the recipient of funds.

13.5 Are there any restrictions on third parties, including lawyers, funding claims under the law of your jurisdiction? Are contingency fees legal under the law of your jurisdiction? Are there any "professional" funders active in the market, either for litigation or arbitration?

Currently, contingency fees are not permitted insofar as lawyers are concerned under Singapore law. However, Singapore amended its Civil Law Act (Sections 5A and 5B) as well as its Legal Profession Act (Section 107(3A)) in 2017, in order to encourage third-party funding in Singapore. With these amendments, the traditional tort of maintenance and champerty was removed and third-party funding was officially recognised in relation to international arbitration proceedings. It is envisaged that the market for professional third-party funders for litigation/arbitration will increase significantly moving forward.

The Civil Law (Third-Party Funding) (Amendment) Regulations 2021 came into effect on 28 June 2021 and extended the availability of third-party funding to domestic arbitration, as well as proceedings brought in the SICC, and related mediations.

14 Investor State Arbitrations

14.1 Has your jurisdiction signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as "ICSID")?

Yes, Singapore has ratified and signed the ICSID. Singapore's commitment to protecting investments within Asia is further illustrated by the ASEAN Agreement 1987 and the ASEAN Comprehensive Investment Agreement 2009, binding the ASEAN Member States to comprehensive investment protections. Article 33 of the latter agreement provides that investor-state disputes may be submitted for arbitration under the UNCITRAL Arbitration Rules 1976, or to the ICSID centre if the necessary consent exists, or to any other regional centre for arbitration within the ASEAN, such as the Kuala Lumpur Regional Centre for Arbitration or the SIAC.

14.2 How many Bilateral Investment Treaties ("BITs") or other multi-party investment treaties (such as the Energy Charter Treaty) is your jurisdiction party to?

Singapore has 54 BITs currently in force with various countries and trading blocs, and 38 further treaties with investment provisions.

14.3 Does your jurisdiction have any noteworthy language that it uses in its investment treaties (for example, in relation to "most favoured nation" or exhaustion of local remedies provisions)? If so, what is the intended significance of that language?

Singapore adopts a bespoke approach to its various investment treaties on a case-by-case basis.

For instance, depending on the type of investments in the specific country and/or economic area, definitions of certain key terms may vary. Trade concepts such as "most favoured nation" and "national treatment" remain largely incorporated, and common terminology for substantive protections such as "fair and equitable treatment" as well as "enjoying full protection and security" is often used.

14.4 What is the approach of the national courts in your jurisdiction towards the defence of state immunity regarding jurisdiction and execution?

Enforcement of arbitration agreements and awards against sovereign states poses the particular challenge of sovereign immunity. Singapore follows a restrictive immunity policy that allows arbitral agreements to be enforced against sovereign states where they relate to commercial and contractual matters and not purely sovereign ones. Similarly, awards may be enforced against assets of a state used for commercial purposes and not sovereign or diplomatic purposes. Section 11 of the State Immunity Act 1985 provides that the state is not immune in respect of proceedings in Singaporean courts that relate to arbitration. The Singapore Court of Appeal has also recently shown, in a dispute between an Indian company and the Government of the Maldives, that the judiciary will readily recognise waivers of immunity by states and refer the parties to arbitration.

Moreover, the High Court has held that service of a leave order on a foreign state is under the purview of Section 14(1) of the State Immunity Act (*see Josias Van Zyl and others v Kingdom of Lesotho* [2017] 4 SLR 849).

15 General

15.1 Are there noteworthy trends or current issues affecting the use of arbitration in your jurisdiction (such as pending or proposed legislation)? Are there any trends regarding the types of dispute commonly being referred to arbitration?

In 2012, the IAA was amended to include, among other things, a provision that interim orders and awards made by emergency arbitrators shall have the same status as awards made by a constituted tribunal. The SIAC published new rules in 2016. Key features of the amended rules include a more streamlined procedure for consolidating multi-contract disputes, provisions for joinder of additional parties, and rules providing for the early dismissal of claims and defences. The IAA was amended on 1

December 2020 to allow for a default procedure for the appointment of tribunals in multi-party disputes, and to address concerns around the enforcement of confidentiality obligations in arbitration (which were largely borne out of the increased use of virtual hearings as a result of COVID-19 restrictions).

15.2 What, if any, recent steps have institutions in your jurisdiction taken to address current issues in arbitration (such as time and costs)?

In February 2019, the Singapore Academy of Law published a report on certain issues concerning costs in arbitration-related court proceedings and provided suggested reforms in relation to arbitration costs.

In April 2019, the Singapore Minister of Law confirmed in Parliament that as part of its review of the IAA, it is considering an opt-in mechanism to allow parties to appeal arbitration awards on errors of law. This interesting development reflects Singapore's intention to develop its arbitration best practices and to increase the popularity of Singapore as a global centre for dispute resolution.

2019 saw the introduction of the Singapore Mediation Convention, with an opening ceremony held in Singapore at which a number of countries ratified the Convention.

Both the SIAC and the SCMA are in the process of updating their rules.

15.3 What is the approach of the national courts in your jurisdiction towards the conduct of remote or virtual arbitration hearings as an effective substitute to in-person arbitration hearings? How (if at all) has that approach evolved since the onset of the COVID-19 pandemic?

The Singapore court has, for a long time, proactively embraced the use of videoconferencing as a substitute for in-person hearings in arbitration (in part and in full – typically for the attendance of witnesses and experts) as a means of reducing costs. Since COVID-19, the use of videoconferencing and remote hearings generally has increased (in both arbitration and in the Singapore court), and it is expected that trend will continue even after COVID-19 restrictions cease. Popular arbitration venues in Singapore were already well equipped to support remote hearings.

In response to the increased trend towards remote hearings, the IAA was amended in December 2020 to give express powers to the Singapore court and to Singapore tribunals to make orders in relation to confidentiality obligations in arbitration.

Paul Aston acts for clients in the maritime, offshore and commodity sectors (mainly oil and gas). He specialises in all aspects of shipping, transport and insurance, down- and midstream oil and gas transactions, ship building and repair disputes, advising shipyards and buyers on contracts for the construction of various offshore structures, (rigs/FPSO) as well as their utilisation offshore. He has particular expertise in relation to long- and short-term contracts for the supply, transportation, sale and purchase, and storage of petroleum products and LNG. He advises on commercial transactions and shipping projects.

Paul has worked in our London, Shanghai, Hong Kong and Singapore (which he founded) offices, and is presently located in the Singapore office with particular responsibility for offshore and energy. Paul has substantial experience of acting for parties in international arbitration and mediation in many jurisdictions.

He has been appointed by the Singapore Mediation Centre as one of their associate mediators, is a Fellow of CIArb, has Higher Rights of Audience before the English Court (HRA Civil), was a board member of the Singapore Chamber of Maritime Arbitration, and sits as a panel arbitrator for several regional arbitration bodies.

Paul was admitted as a UK solicitor in 1982 and a HK solicitor in 1988. He first obtained his Singapore foreign registered lawyer recognition in 1990.

HFW
10 Collyer Quay
Ocean Financial Centre #18-01
Singapore 049315

Tel: +65 6411 5338
Email: paul.aston@hfw.com
URL: www.hfw.com

Suzanne Meiklejohn's practice covers dispute resolution across the international trade sector, including commodities trading disputes (predominantly physicals, largely in bulk such as coal, grain, and iron ore, as well as petroleum products) under sale contracts, BLs, LCs and charterparties, disputes under payment and security instruments, offshore contract disputes (upstream and downstream) including under PRE-FEED, FEED, drilling, supply, EPC, operations, logistics, maintenance and decommissioning contracts.

Suzanne has experience representing parties in various dispute resolution fora, including the English and European Courts, the World Trade Organization Disputes Panel, and various arbitral institutions, including the SIAC, SCMA, LCIA, ICC and LMAA, as well as trade body panels such as GAFTA and FOSFA.

Before transferring to Singapore in 2013, Suzanne worked at HFW's London and Brussels offices. Suzanne was named as one of the most influential lawyers under 40 in Singapore by the *Singapore Business Review* 2020.

HFW
10 Collyer Quay
Ocean Financial Centre #18-01
Singapore 049315

Tel: +65 6411 5346
Email: suzanne.meiklejohn@hfw.com
URL: www.hfw.com

HFW is a sector-focused law firm with 19 offices across Asia, Australia, the Middle East, Europe and the Americas. HFW has six offices in the Asia-Pacific region, in Singapore, Hong Kong, Shanghai, Sydney, Melbourne and Perth.

Our International Arbitration team focuses on disputes in a number of core sectors including energy, trade and commodities, shipping, aviation, insurance/reinsurance, banking and financial services, and construction. With its legacy as an international trade firm, HFW offers specialist arbitration teams in almost all of the world's major international arbitration centres, including Singapore, Hong Kong, Geneva, Paris and London.

HFW has been proud to operate an office in Singapore for over 30 years. We are among the largest of the international firms by headcount in Singapore. For the past six years, the firm has had a formal law alliance with a local Singaporean partner firm, Asia Legal LLC.

www.hfw.com

ICLG.com

Other titles in the ICLG series

Alternative Investment Funds
Anti-Money Laundering
Aviation Finance & Leasing
Aviation Law
Business Crime
Cartels & Leniency
Class & Group Actions
Competition Litigation
Construction & Engineering Law
Consumer Protection
Copyright
Corporate Governance
Corporate Immigration
Corporate Investigations
Corporate Tax
Cybersecurity
Data Protection
Derivatives
Designs
Digital Business
Digital Health
Drug & Medical Device Litigation
Employment & Labour Law
Enforcement of Foreign Judgments
Environment & Climate Change Law
Environmental, Social & Governance Law
Family Law
Fintech
Foreign Direct Investment Regimes
Franchise
Gambling
Insurance & Reinsurance
Investor-State Arbitration
Lending & Secured Finance
Litigation & Dispute Resolution
Merger Control
Mergers & Acquisitions
Mining Law
Oil & Gas Regulation
Patents
Pharmaceutical Advertising
Private Client
Private Equity
Product Liability
Project Finance
Public Investment Funds
Public Procurement
Real Estate
Renewable Energy
Restructuring & Insolvency
Sanctions
Securitisation
Shipping Law
Technology Sourcing
Telecoms, Media & Internet
Trade Marks
Vertical Agreements and Dominant Firms

@ICLG_GLG

The International Comparative Legal Guides are published by:

global legal group