

CHAPTER 4 INTERNATIONAL AND DOMESTIC ARBITRATION IN SINGAPORE

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SECTION 1 FRAMEWORK OF ARBITRATION IN SINGAPORE

4.1.1 Two separate legal regimes govern the conduct of arbitration in Singapore. Where the situs of arbitration is Singapore, the Arbitration Act (Cap. 10) (Revised Edition 2002) (Arbitration Act) or the International Arbitration Act (Cap. 143A) (IAA) will regulate the conduct of the arbitral proceedings. Domestic arbitration is governed by the Arbitration Act which came into force on 1 March 2002 and repealed the former Arbitration Act (Cap. 10) in its entirety. The Arbitration Act applies to any arbitration where the place of arbitration is Singapore and where Part II of the IAA does not apply.¹ The Arbitration Act was enacted to align the laws applicable to domestic arbitration with the UNCITRAL Model Law on International Commercial Arbitration (Model Law). For international arbitration agreements, the applicable statute is the IAA which applies to international arbitrations as well as non-international arbitrations where parties have a written agreement for Part II of the IAA and the Model Law to apply.² The IAA gives the Model Law, with the exception of Chapter VIII thereof, “the force of law in Singapore.”³ Under the IAA, an arbitration is international if -

- (a) at least one of the parties has its place of business⁴ in any state other than Singapore, at the time the arbitration agreement was concluded; or
- (b) the agreed place of arbitration is situated outside the state in which the parties have their place of business; or
- (c) any place where a substantial part of the obligation of the commercial relationship is to be performed or the place to which the subject matter of the dispute is most closely connected is situated outside the state in which the parties have their place of business; or
- (d) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.⁵

4.1.2 The distinction between the two legal regimes primarily lies in the degree of court intervention in the arbitral process and respect for party autonomy.⁶ Under the international arbitration regime, court intervention is limited and restricted to instances expressly provided by law. The court does not possess any residual power to grant an application which the law does not expressly provide.⁷ There are also limited instances of recourse against the arbitral award under the IAA. By comparison, under the Arbitration Act, a party may appeal an award on a question of law arising out of the award by

agreement of the parties or by leave of court as well.⁸ It should be noted however that not every decision of law made in an award is appealable. An appeal on a question of law must be premised on the findings of fact in the award. The attempts of any parties to couch factual findings by framing them into question of law will not find favour before the Singapore Court.⁹ The Arbitration Act also allows the parties to apply to the court for a determination any question of law arising in the course of the arbitration proceedings which substantially affects the rights of the parties.¹⁰

4.1.3 The operation of the dual-track arbitration regime in Singapore allows the parties the facility of opting into or out of a particular regime when so agreed by them. Thus, the parties may specifically “opt out” of the regime which would otherwise be applicable by the terms of the respective Acts by referring to the arbitration regime (IAA or the Arbitration Act) that they wish to “opt into” in their arbitration agreement. Where, for example, the parties to the agreement have places of business outside Singapore and wish to have their arbitration in Singapore, the law applicable to the arbitration would be the IAA. If the parties wish for a greater degree of court supervision, they could “opt out” of the IAA by stipulating in the arbitration agreement that the Arbitration Act applies.¹¹ Similarly, where the parties have places of business in Singapore, but wish to have less court supervision over the arbitration, they could “opt in” to the IAA by stating that the IAA applies.¹²

Conduct of Arbitration

4.1.4 Arbitration in Singapore may be conducted under ad hoc rules or administered by an arbitration institution. The Singapore International Arbitration Centre (SIAC) is the only arbitration institution in Singapore. The SIAC administers most of its cases under its own Rules of Arbitration which are adopted by parties in their arbitration agreement. The SIAC is also able to administer arbitrations under any other rules agreed to by the parties such as the UNCITRAL Arbitration Rules 1976.¹³

4.1.5 The SIAC maintains a Panel of Accredited Arbitrators composed of a regional panel and an international panel of experts from which most appointments are made for arbitrations administered by it.¹⁴ SIAC will also appoint arbitrators for ad hoc arbitrations. The Deputy Chairman of the SIAC is the default statutory appointing authority for arbitrators under the IAA and the Arbitration Act.¹⁵ Aside from the appointment of the arbitrator,¹⁶ other services offered by the SIAC include financial management,¹⁷ administrative functions and the provision of facilities and logistics in connection with arbitration hearings.

4.1.6 Where a case is conducted according to SIAC's arbitration rules,¹⁸ parties pay an administration fee. In cases falling outside SIAC's arbitration rules, where SIAC is only asked to appoint an arbitrator, only an appointment fee is charged. The administration fee is pegged to the amount of the claim or counterclaim ascertained according to a published schedule.¹⁹ The arbitrator appointment fee, on the other hand, is a flat fee, not dependent on the amount of claim. For international arbitrations, the maximum administration fee

chargeable is now capped at S\$ 60,250. Where a case is administered by SIAC, no separate fee has to be paid for the appointment of the arbitrator.

Representation in Arbitration Proceedings; Foreign Lawyers

4.1.7 While lawyers are normally engaged in arbitration proceedings, parties may be represented by any person of their choice in any arbitration who may not be lawyers. Where the applicable law is Singapore law, an amendment made in 2004 to the Legal Profession Act (Cap. 161)²⁰ enable foreign lawyers who are not admitted to practise law in Singapore to represent a party in arbitration proceedings conducted in Singapore and may give advice, prepare documents and render any other assistance in relation to or arising out of arbitration proceedings. This includes cases where the substantive law involved in the dispute is the law of Singapore.

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SECTION 2 THE ARBITRAL PROCESS

Arbitration Agreement

4.2.1 There is no distinction between a submission (an agreement to submit existing disputes to arbitration) and a pre-dispute arbitration clause in either the Arbitration Act or the IAA. An “arbitration agreement” is defined in both statutes as an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them whether contractual or not.²¹ It may take the form of an arbitration clause in a contract or the form of a separate agreement.²² The arbitration agreement must be in writing contained in a document signed by the parties or in an exchange of letters, telex, telefacsimile or other means of communication which provide a record of the agreement.²³

4.2.2 Both the Arbitration Act and the IAA further provides that an arbitration agreement is deemed constituted in the following situations:

(a) Where a party asserts the existence of an arbitration agreement in a pleading, statement of case or any other document in circumstances in which the assertion calls for a reply but is not denied, an effective arbitration agreement is deemed to exist.²⁴

(b) A reference in a bill of lading to a charterparty or some other document containing an arbitration clause constitutes an arbitration agreement if the reference is such as to make that clause part of the bill of lading.²⁵

4.2.3 No specific words or form are required to give effect to an arbitration agreement but the intention to arbitrate must be clear and unequivocal.²⁶

4.2.4 The IAA and the Arbitration Act expressly provides that an arbitration agreement is independent of the other terms of the contract.²⁷ The doctrine

of separability facilitates the concept of kompetenz-kompetenz, which gives the arbitrator the power to rule on his own jurisdiction.

4.2.5 In Singapore, arbitrators in both domestic and international arbitrations are given express statutory power to decide on their “own jurisdiction including any objections with respect to the existence or validity of the arbitration agreement. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause”.²⁸ If the arbitral tribunal rules as a preliminary question, that it has jurisdiction, that decision is subject to a review by the High Court.²⁹ An appeal to the Court of Appeal on this issue is permitted with leave of the High Court.³⁰ A decision by the tribunal that it has no jurisdiction is not subject to such a review as such a decision is not an “award” which is subject to appeal or setting aside by the court.³¹

4.2.6 To enforce arbitration agreements, the Arbitration Act and the IAA both provide for the stay of court proceedings which are commenced in breach of such agreements. The concept of a “stay” operates effectively to suspend court proceedings by the court’s restraint in exercising jurisdiction over the matter.³² If the parties do not subsequently proceed with the arbitration, they may revive the court proceedings. Under the Arbitration Act, the right to apply for a stay of court proceedings exists only if:³³

- a) the applicant is a party to the arbitration agreement;
- b) the agreement covers the matter in dispute before the court;
- c) the applicant enters an appearance to the court proceedings;
- d) the applicant has not delivered pleadings or taken any step in the proceedings; and
- e) the applicant remains ready and willing to arbitrate.

4.2.7 The power to grant stay under the Arbitration Act is discretionary.³⁴

4.2.8 The conditions for the right to stay proceedings commenced in breach of an arbitration agreement under the IAA are generally similar to those under the Arbitration Act. However, the court’s power is not discretionary and the court must grant a stay if the conditions are fulfilled and direct the parties to proceed to arbitration unless the “the arbitration agreement is null and void, inoperative or incapable of being performed”.³⁵ Apart from the loss of right to stay on the ground of having filed pleadings or taken steps in the proceedings (as in domestic arbitration agreements), challenges to applications for stay must be directed to the enforceability of the arbitration agreement. This means that, even in cases where there are allegations of fraud, multiplicity of actions or difficult legal issues to be contested, the court has no discretion to refuse a stay.

4.2.9 Where the court orders a stay, the court may issue orders in relation to the property subject to the dispute for the purpose of preserving the rights of the parties.³⁶ Under the IAA and the Arbitration Act, the court has the power to discontinue proceedings in respect of which no further step has been taken for at least two years after a stay order was made.³⁷

Appointment of Arbitrators

4.2.10 Apart from specific requirements imposed by the parties, there are no special qualifications (other than independence and impartiality) required of any arbitrator.³⁸ Arbitrators may be of any nationality³⁹ and need not be legally trained although many of the arbitrators in Singapore are lawyers. Most arbitrators in Singapore would also have had some training in the law and conduct of arbitration.⁴⁰

4.2.11 Disclosure of all circumstances likely to give rise to justifiable doubts as to the arbitrator's impartiality or independence is required of arbitrators acting under the Arbitration Act,⁴¹ the IAA⁴² and the SIAC Rules.⁴³ The duty to disclose is ongoing, and runs from the time of appointment and continues throughout the arbitration proceedings.⁴⁴

4.2.12 The arbitrator's appointment may be challenged only if circumstances exist which give rise to justifiable doubts as to his impartiality or independence or he does not possess the qualifications agreed to by the parties.⁴⁵ Such circumstances include any personal, business or professional relationship with the parties to the dispute or an interest in the outcome of the dispute.⁴⁶ The standard of bias or partiality that has been applied by the Singapore courts is whether a reasonable and fair-minded person sitting in court and knowing all the reasonable facts would have a reasonable suspicion that a fair trial for the applicant would not be possible.⁴⁷ In domestic arbitration under the Arbitration Act Although the court is empowered to remove an arbitrator due to his failure or impossibility to act, it should be noted that the approach taken by Singapore court remains that of minimal judicial interference with ongoing process of the arbitration.⁴⁸

4.2.13 Parties are at liberty to agree on the number of arbitrators. In the absence of an agreed number, a single arbitrator is presumed.⁴⁹ There is no rule against having a tribunal of two or even numbers although, in most cases, parties agree to either a single or a three-man tribunal. Where an even number of arbitrators is agreed, and there is a deadlock, there can be no enforceable award.⁵⁰

4.2.14 Where parties fail to agree on an appointing procedure or fail to jointly appoint a sole arbitrator, either party, in domestic or international arbitration, may apply to the Deputy Chairman of the SIAC for appointment.⁵¹ Where the SIAC Rules are applicable, the process and the appointment will be made by the Chairman of the SIAC.⁵²

4.2.15 Where the reference which comes within the IAA is to a panel of three arbitrators, and the parties have not agreed on an appointment procedure, each party shall appoint an arbitrator and the third arbitrator shall be appointed by agreement of the parties.⁵³ If the parties cannot agree on the appointment of the third arbitrator, the appointment will be made (upon the request of a party) by the Deputy Chairman of the SIAC as the statutory appointing authority.⁵⁴

4.2.16 In any other case where, under an appointment procedure, a party or contractual appointing body fails to take such steps as may be required (and the parties have not agreed on a default procedure), the Deputy Chairman of the SIAC is empowered to take the necessary measures.⁵⁵

4.2.17 Under the IAA, the decision of the Deputy Chairman of the SIAC with regard to the appointment of arbitrators is not subject to any appeal.⁵⁶ However, under the Arbitration Act, appointments by the Deputy Chairman of the SIAC may be challenged under the statutory grounds set out in Sect. 14(3) Arbitration Act, namely (a) justifiable doubts as to independence and impartiality and (b) lack of qualifications agreed by the parties.⁵⁷

Arbitral Procedure

4.2.18 Where Singapore is the place of arbitration, the parties are generally free to choose the procedure of arbitration.⁵⁸ If there is no agreement between the parties as to the procedure, the tribunal conducts the arbitration in a manner that it considers appropriate.⁵⁹ Both the Arbitration Act and the IAA require the filing and service of statements of claim and defence within the period of time agreed or prescribed by the tribunal.⁶⁰ Where the SIAC Rules are adopted, and in the absence of any directions from the tribunal, the claimant is required to file and serve the statement of case within thirty days of the constitution of the tribunal. The respondents would be required to file and serve the statement of defence within thirty days on receipt of the case.⁶¹ The tribunal is thereafter required to draw up a memorandum of issues setting out the questions of fact or law that requires determination.⁶²

4.2.19 Oral hearings are normally held in arbitrations under the Arbitration Act unless parties have agreed to allow the tribunal to make its finding on documents only. In arbitrations under the Arbitration Act, the IAA⁶³ and/or the SIAC Rules,⁶⁴ the tribunal has the power to decide whether to hold oral hearings for the presentation of evidence or for oral arguments, or to proceed on the basis of documents only, subject to any contrary agreement.

4.2.20 Arbitrators in Singapore are not bound by judicial rules of evidence. The Evidence Act, which applies to all proceedings in court, expressly excludes its own application to arbitral proceedings.⁶⁵ Rules such as those against hearsay, extrinsic evidence or illegally obtained evidence do not have application in an arbitration. The power to determine the admissibility, relevance, materiality and weight of any evidence lies with the arbitral tribunal.⁶⁶

4.2.21 For arbitrations under the domestic Arbitration Act, the parties may agree on the powers to be exercised by the tribunal. The Arbitration Act confers certain powers on the tribunal (which are without prejudice to any powers conferred by the parties) which include the power to make orders or give directions for security for costs, discovery, the preservation and interim custody of evidence for the purposes of the proceedings and to administer oaths or affirmations.⁶⁷ The powers conferred by the IAA on the tribunal are

similar.⁶⁸ In addition, under the IAA, the tribunal has the power to grant an interim injunction or any other interim measure or to secure the amount in dispute.⁶⁹ Security may be furnished by cash deposits⁷⁰ or by way of bank guarantees or solicitor's undertaking. Further, arbitrators acting in arbitrations under the IAA, the Arbitration Act or the SIAC Rules have been given specific powers to make orders for the interim preservation, storage, custody, sale or other disposal of any goods or property which is or forms part of the subject matter of the reference.⁷¹

4.2.22 Orders or directions made by the tribunal, both under the Arbitration Act and the IAA, are enforceable by leave of the High Court, in the same manner as if they were made by the court. Where leave is given, judgment may be entered in terms of the order or direction.⁷²

4.2.23 The powers granted to arbitrators in the Arbitration Act and the IAA are concurrently exercisable by the High Court.⁷³ Parties are therefore at liberty to apply either to the tribunal or the court as may be expedient. However, certain orders may be more appropriate to be granted by the court, e.g., injunctions.

4.2.24 Further, as regards the Arbitration Act, any order of the court made under Sect. 31 ceases to have effect if the arbitral tribunal, having power to act in relation to the subject matter of the order, makes an order to which the court order relates. In other words, the arbitral order would prevail over the court order under the domestic regime.⁷⁴

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SECTION 3 ARBITRAL AWARDS

4.3.1 An award is defined in the IAA and the Arbitration Act as “a decision of the arbitral tribunal on the substance of the dispute and includes any interim, interlocutory or partial award”.⁷⁵ The definition specifically excludes any orders or directions made pursuant to the statutory powers conferred on the arbitrator in both Acts.⁷⁶ Moreover, any decisions, orders or directions which do not determine matters in dispute shall not be considered “awards” even they are labeled as such by the tribunal.⁷⁷ “Interim” awards refer to an award that is not the final (last) award in the arbitration. The term “interim award” has been used on awards on the applicable law, time-bar defences, joinder of parties and arbitral jurisdiction. “Partial” awards generally mean awards in which only part of the claims submitted have been disposed of. “Interlocutory” awards are interim awards that deal with issues such as liability (being final on that issue) leaving quantum to be decided. Awards, including interim awards, are enforceable with leave of the High Court in the same manner as orders or judgments of court.⁷⁸

4.3.2 There is no statutorily imposed time limit for a tribunal to make its award either under the Arbitration Act or the IAA.⁷⁹ Under the Arbitration Act, the court may, on the application of any party or the arbitral tribunal, extend

the time limit provided for in the arbitration agreement, unless otherwise agreed by the parties.⁸⁰ However, all available tribunal processes for application of extension of time must first be exhausted before making the application. Further, the court can only extend time if it is satisfied that substantial injustice would otherwise be done. The SIAC Rules, require the tribunal to make the award within forty-five days of the close of hearing, unless the Registrar extends time or the parties agree otherwise.⁸¹

4.3.3 An arbitral award must be in writing and must be signed by the arbitrator or the arbitrators. In an arbitration where there is more than one arbitrator, the IAA requires only a majority of the arbitrators to have signed the award if the reason for the omission is stated.⁸² The award must give reasons unless the parties agree otherwise or the award is an award on agreed terms.⁸³ The award must state the date and place of arbitration.⁸⁴

4.3.4 Where the SIAC Rules apply, the award is to be delivered to the Registrar of the SIAC, who will cause authenticated copies⁸⁵ to be transmitted to the parties upon payment of all outstanding fees and expenses. As of January 2005, the SIAC provides authentication and certification service, not only to arbitrations administered by it, but to all arbitral awards issued pursuant to arbitration proceedings held in Singapore.

4.3.5 An award once made⁸⁶ is valid and binding on the parties⁸⁷ and requires no further step of registration or fiat to give it effect. However, the law provides a party various remedies to challenge the arbitral award. Further, if any party fails to voluntarily adhere to the terms of the award, the award may be enforced before the courts of Singapore.

Correction, Interpretation and Additional Award

4.3.6 In both domestic and international arbitrations, arbitrators are permitted to make corrections in any award of “any errors in computation, any clerical or typographical errors or other errors of similar nature”.⁸⁸ Corrections may be made on the tribunal’s own initiative or at the request of any of the parties to the tribunal within thirty days of the receipt of the award.⁸⁹ Under the Arbitration Act and the IAA, the period of thirty days may be extended by the tribunal, on the ground of necessity. In an arbitration under SIAC Rules the time limits may be extended by the Registrar of SIAC.⁹⁰

4.3.7 Parties may also apply to the tribunal for an interpretation of a specific point or part of the award.⁹¹ The correction or interpretation must be made by the tribunal within thirty days of the receipt of the request and the interpretation will form part of the award.

4.3.8 Where any claim made in the proceedings has been omitted from the award, and in the absence of any contrary agreement, any party may, by notice to the tribunal, request the tribunal to make additional awards as to the claims presented but omitted within thirty days of receipt of the award (with notice to the other party).⁹² If the tribunal considers the request to be justified, the SIAC Rules state that the additional award must be made within forty-five

days of receipt of the request.⁹³ The IAA and the Arbitration Act provide that the additional award may be made within sixty days.⁹⁴

Appeal Against the Award

4.3.9 There is no legal impediment against an appeal process from one arbitral tribunal to an appellate arbitral tribunal in the event the parties so agree. However, there is no known institution in Singapore which employs such a mechanism.

4.3.10 Appeals to a court against awards on the merits are permissible only in arbitrations under the domestic Arbitration Act.⁹⁵ The right of appeal can be excluded by agreement.⁹⁶ An appeal may be brought only if all the parties consent or with leave of the High Court and must be made within twenty eight days after the award has been made.⁹⁷

4.3.11 Before granting leave to appeal, the court must be satisfied that:⁹⁸

- (a) the determination of the question will substantially affect the rights of one or more of the parties;
- (b) the question is one which the arbitral tribunal was asked to determine;
- (c) on the basis of findings of fact in the award:
 - (i) the decision of the arbitral tribunal on the question is obviously wrong; or
 - (ii) the question is one of general public importance and the decision of the arbitral tribunal is at least open to serious doubt; and
- (d) 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.

4.3.12 In addition, before an appeal can be made, the applicant must first exhaust all available arbitral processes of appeal or review and any available recourse under Sect. 43 Arbitration Act.⁹⁹ Where the High Court has made a decision on the merits of the appeal and refuses leave to appeal further to the Court of Appeal, the right of further appeal terminates.¹⁰⁰

Setting Aside the Award

4.3.13 Arbitral awards made under the Arbitration Act may, apart from being set aside on appeal, be also set aside if:¹⁰¹

- (a) the court is satisfied that:
 - (i) a party to the arbitration agreement was under some incapacity;
 - (ii) the arbitration agreement is not valid under the law to which the parties have subjected it, or failing any indication thereon, under the laws of Singapore;
 - (iii) the party making the application was not given proper notice of the appointment of an arbitrator or the arbitration proceedings or was otherwise unable to present his case;
 - (iv) 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, except that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside;

(v) the composition of the arbitral tribunal or the arbitral procedure is not in accordance with the agreement of the parties, unless such agreement is contrary to any provisions of this Act from which the parties cannot derogate, or, in the absence of such agreement, is contrary to the provisions of this Act;

(vi) the making of the award was induced or affected by fraud or corruption;

(vii) 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; or
(b) if the court finds that—

(i) the subject matter of the dispute is not capable of settlement by arbitration under this Act; or

(ii) the award is contrary to public policy.

4.3.14 Under the IAA, the only recourse against an award made is to set it aside and the grounds to set aside are similar to the grounds to set aside an award under the Arbitration Act.¹⁰² The grounds to set aside an award are exhaustive and the court hearing an application to set aside an award under the IAA has no power to investigate the merits of the dispute or to review any decision of law or fact made by the tribunal. A policy of minimal curial intervention has consistently been adopted by the Singapore court even with regard to domestic cases. The Court of Appeal has always taken a generous approach and will not examine an award assiduously looking for blame or fault in the arbitral process.¹⁰³

4.3.15 Under both the Arbitration Act and the IAA, the application to set aside an award must be made by originating summons within three months from the date of receipt of the award by the applicant.¹⁰⁴

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SECTION 4 ENFORCEMENT OF ARBITRAL AWARDS

4.4.1 Enforcement of arbitral awards made in Singapore by way of execution proceedings, whether in a domestic¹⁰⁵ or international arbitration,¹⁰⁶ requires the leave of the court. Applications are to be made to the High Court.¹⁰⁷ In cases of urgency, ex parte applications are permissible on such terms as may be imposed by the court.¹⁰⁸ If leave to enforce an award is refused, an appeal may be made to the Court of Appeal within one month from the date the order refusing leave is made.¹⁰⁹ The application for leave to enforce the award must be made within six years after the making of the award.¹¹⁰

4.4.2 Leave to enforce an award as a judgment or order of the court is often granted ex parte and the order so obtained served on the debtor. Within fourteen days after service of the order granting leave or such other period as the court granting leave may stipulate, the debtor may apply to set aside the

order.¹¹¹ The award shall not be enforced during that period or, if the debtor applies to set aside the order, until after the application is finally disposed of.

4.4.3 A party who fails in its application to set aside the order granting leave to enforce the award may appeal to the Court of Appeal within one month of the date of the court's decision.¹¹² An appeal against the order granting leave to enforce the award would not operate as a stay or suspension of execution.¹¹³ The Court of Appeal may, however, order that execution be suspended upon security being furnished or make such order as may be appropriate to prevent prejudice to any of the parties pending the appeal.¹¹⁴

4.4.4 The Arbitration Act is silent as to the grounds on which the court may refuse enforcement of the award. However, to keep within the spirit of Section 47 of the Arbitration Act (which limits challenges to awards to those set out within the Arbitration Act) the grounds for refusal to enforce should be no wider than those that relate to the setting aside of the award.¹¹⁵ An award made under the IAA may only be refused enforcement if the grounds for setting aside, being the exclusive recourse against the award, exist.¹¹⁶

4.4.5 The procedure for the enforcement of foreign arbitral awards made in a New York Convention country other than Singapore – Singapore having made the reciprocity reservation set out in Art I(3) of the New York Convention – is set out in Part III of the IAA. These awards may be enforced in Singapore either by action¹¹⁷ or in the same manner as a judgment or order to the same effect, with the leave of the High Court. If leave is granted, judgment will be entered in terms of the award.¹¹⁸ Such awards are also recognized as binding for all purposes upon the persons between whom they were made, and may accordingly be relied upon by any of those parties by way of defence, set-off or otherwise in any legal proceedings in Singapore.¹¹⁹

4.4.6 Applications for leave to enforce a foreign award made in a New York Convention country must be made within six years after the making of the award.¹²⁰ To enforce the award, the applicant must file an originating summons together with an affidavit —

- (a) exhibiting the arbitration agreement and the duly authenticated original award or a certified copy thereof;
- (b) stating the name and the usual or last known place of abode or business of the applicant and the person against whom enforcement is sought;
- (c) stating that the award has not, or the extent to which it has not, been complied with.

4.4.7 Leave to enforce a foreign award as a judgment or order of the court is often granted ex parte and the order so obtained served on the debtor. Within fourteen days after service of the order granting leave or such other period as the court granting leave may stipulate, the debtor may apply to set aside the order.¹²¹ The award shall not be enforced during the pendency of the application and until after it is finally disposed of.¹²²

4.4.8 A court hearing the application for enforcement of a foreign award cannot review the case on the merits. It may, however, refuse to grant enforcement of the award in Singapore if the grounds set out in Sect. 31(2) IAA are proven.¹²³ These grounds are identical to those set out in Art. V of the New York Convention.¹²⁴ An appeal against the decision of the High Court on the enforcement of a foreign award can be made to the Court of Appeal.¹²⁵

4.4.9 Following an amendment to the Arbitration Act (Cap. 10) which came into effect on 16 May 2003, foreign awards made in countries or territories which are not signatories to the New York Convention, may also be enforced in Singapore in the same manner as a judgment or order to the same effect, with the leave of the High Court. If leave is granted, judgment will be entered in terms of the award.¹²⁶

4.4.10 The procedure for the enforcement of awards made under the International Convention for the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) is set out in the Arbitration (International Investment Disputes) Rules¹²⁷ read with Order 67 of the Rules of Court (1997 ed.).¹²⁸ To date, no attempt has been made to enforce an ICSID award in Singapore.

4.4.11 An arbitral award made in England or in any of those Commonwealth jurisdictions¹²⁹ with which Singapore has reciprocal arrangements for the recognition of judgments may be enforced if the award has in pursuance of the law in force in the place where it was made, become enforceable as a judgment of that court.¹³⁰ As the procedure is more onerous on the applicant and because many of the Commonwealth jurisdictions are now parties to the New York Convention, this procedure now has less practical importance.¹³¹

4.4.12 An application for registration of a judgment based on such an award must be made within twelve months after the date of the judgment. The court hearing the application has the discretion on a "just and convenient" principle, to allow enforcement of the judgment in Singapore.¹³² The court shall not allow registration of a judgment if the original court acted without jurisdiction; if the debtor did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court; if the debtor was not duly served with the process; if judgment was obtained by fraud; if an appeal is pending; or if it is contrary to the public policy of Singapore.¹³³

Certification and Authentication of Awards for Enforcement Overseas

4.4.13 A party seeking to enforce an arbitral award outside Singapore will be required under Article IV(1) UN Convention for the recognition and Enforcement of Foreign Arbitral Awards, New York 1958 ("New York Convention") by the foreign court before which enforcement is sought, to tender -

- A duly authenticated original award or a duly certified copy thereof; and
- The original arbitration agreement or a duly certified copy thereof.

4.4.14 Courts of different jurisdictions may interpret these provisions differently and may require certain formalities to be adhered to before giving cognizance to the awards sought to be enforced. Awards made in SIAC arbitrations are certified and authenticated by SIAC Registrar whenever so requested by a party. Such certification and authentication have been accepted by many jurisdictions worldwide. There is however no public body certifying or authenticating awards made in ad hoc arbitrations in Singapore. The SIAC has since extended this service to ad hoc arbitrations.

4.4.15 With effect from 1 January 2005, arbitral awards made in Singapore in ad hoc arbitration may be deposited with the SIAC and a certification obtained subject to the following:

- a. The award is made in Singapore or is an award made in an arbitration where the seat is Singapore.
- b. The original signed award is lodged by the sole arbitrator or in the case of a 3-person tribunal, by any member of the tribunal accompanied by the arbitration agreement or the document in which the arbitration clause is embodied
- c. The award should be lodged within 3 months after the award is made.
- d. The Registrar may refuse lodgment of any award if he has some reason to doubt its authenticity.

4.4.16 The SIAC Registry of Arbitral Awards is a closed registry. Confidentiality is strictly maintained. Only parties to the arbitration and their authorised representative may inspect the award made in their arbitration.

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Useful Links

1. Singapore International Arbitration Centre [<http://www.siac.org.sg/>]
2. The Arbitration Chambers [<http://www.arbiter.com.sg/>]
3. Singapore Chamber of Maritime Arbitration [<http://www.scma.org.sg/>]

Updated as at 30 April 2008

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