

THE FRAMEWORK AND PRACTICE OF ADR IN SINGAPORE

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INTRODUCTION

1. The Singapore “ADR movement” is relatively young. Although the use of ad hoc arbitration and mediation have been in use for a considerably long time, formal recognition of the arbitral and mediation processes could be said to have been accepted only in 1991 with the formation of the Singapore International Arbitration Centre (“SIAC”). SIAC introduced institutional arbitration in Singapore with professional case administration and trained panel of international arbitrators. In 1992, SIAC initiated mediator training in cooperation with the American Arbitration Association. This first crop of mediators however saw little action in the next few years due primarily to the lack of understanding in Singapore of ADR generally and mediation in particular. The SIAC did however during that period undertake several mediation of disputes which would otherwise have proceeded to full arbitration.

2. Sometime in 1994 the Chief Justice, in his drive to improve the efficiency of the justice system introduced major changes in the civil procedural laws of Singapore to encourage litigants to settle their disputes without litigation. These changes included the imposition of court hearing fees chargeable on a daily basis and pre-trial settlement conferences. Some of these measures eventually made way for the formal introduction of mediation within the judicial system. In 1994, the term “conciliation” was formally introduced in the International Arbitration Act Cap 143 A.

3. In the course of the last 15 years SIAC has grown to be recognised as an international arbitration institution. As well, within Singapore, a number of institutions

have adopted mediation and conciliation as a means of resolving disputes. Such disputes range from family to commercial conflicts.

ADR and the Courts

4. The ADR movement in Singapore is closely related to the changes and developments made in the court system. The Singapore courts have in recent years been successful in clearing their backlog of cases and in reducing the waiting period for cases to be heard. Much of these could be attributable largely to amendments made to the civil procedure which introduced an analogous form of mediation and a pro-active case management system adopted by the Courts.

Pre-Trial Conferences in the Supreme Court

5. In 1992, a pilot project was launched in the Supreme Court in which pre-trial conferences to disputes were held, “as a step towards Alternative Dispute Resolution”. At such PTCs, parties were brought together to consider the possibility of settlement and where this was not possible, parties were assisted in narrowing the areas of dispute. This process was however formalised only in 1996, when the Rules of Court were amended Order 34A¹. At a pre-trial conference, “... the Court may consider any matter including the possibility of settlement of any or all of the issues in the action or proceedings and require the parties to furnish the Court with any such information as it thinks fit, and may also give such directions as appear to be necessary or desirable for securing the just, expeditious and economical disposal of the action or proceedings.”²

6. In the Supreme Court, PTCs are fixed before registrars of the Supreme Court once pleadings are deemed to be closed. The proceedings are confidential in that- “No communication of facts disclosed or of any matter considered in the course of a pre-trial

¹ The amendment is with effect from 1 April 1996. Order 34A r 1 states “... the Court may, at any time after the commencement of any proceedings, of its own motion direct any party or parties to those proceedings to appear before it, in order that the Court may make such order or give such direction as it thinks fit, for the just, expeditious and economical disposal of the cause or matter.”

² Order 34A r 2

conference in any action or proceedings shall be made to the Court conducting the trial of the action or proceedings.”³

7. The practice has developed such that at the PTC, the registrars make suggestions that parties attempt settlement of the case. While this is not strictly mediation, the PTCs serve as an impetus for parties to review their cases before trial to assess the likelihood of success at trial.

Industrial Arbitration Court

8. The IAC was set up in October 1960 to deal specifically with industrial matters concerning employer-employee relations and the settlement of trade union disputes. The IAC enjoys the status of a High Court. The President of the IAC possesses the same rights and privileges as those of a Supreme Court Judge. Panel members sit with President or his Deputy. Only union officers (members or employees) and employers' employees (ie personnel/human resource, managers/officers) and employers' union officials may attend/participate in the Court proceedings. Practising lawyers or paid agents are disallowed to attend or participate in the Court proceedings.

9. While references to IAC is not strictly mandatory, a dispute of an industrial nature may be required to be submitted for arbitration under the IAC if directed by the Minister for Manpower; or directed by the President of Singapore in the public interest. Negotiations and conciliation sessions vary in number and length but arbitration hearing last normally 1 day.

Çourt-based Mediation in the Subordinate Courts

10. In the Subordinate Courts, a form of court-based mediation known as Court Dispute Resolution was introduced in 1994 and the Court Mediation Centre was formed in 1995. The Court Mediation Centre was renamed the Primary Dispute Resolution Centre (PDRC) in 1998 and in 2000 the Internet electronic case referral arm e@dr was also established.

³ Order 34A r. 7

11. Settlement conferences, known as Court Dispute Resolution (CDR), was instituted for all civil actions and are provided free of charge to the litigating parties. Civil actions subject to CDR may be divided into two categories:

- a. Non-injury motor accident cases (NIMA); and
- b. Civil disputes other than NIMA cases

12. The amended Practice Direction No. 4 of 2002 states that for writs filed after 1 January 2002, the party filing a writ must comply with a pre-action protocol which requires parties to serve on each other documents dealing with issues on liability and quantum. After these documents are exchanged and the writ is served, a CDR session will be conducted by the PDRC. In practice, the Subordinate Courts have appointed a single District Judge to preside over the CDR.

13. CDR makes use of early neutral evaluation and facilitative mediation techniques for the settlement of NIMA cases. The settlement judge applies early neutral evaluation by giving an indication on liability. While this indication of liability is not binding on the parties, it is a useful tool for settlement as it often forms the basis of negotiation between the parties. Subsequent CDR sessions may be fixed by PDRC where necessary to provide parties fullest opportunity to negotiate and settle the dispute amicably. In a survey done by the PDRC in 2006, 75% of the respondents indicated that at least 4 CDR sessions are required to resolve a NIMA case.

14. For personal-injury cases, the parties are required to comply with a post-action protocol consisting of a form to be accomplished by the parties' solicitors prior to the CDR session. The form requires parties to indicate the presence and identity of witnesses, whether police action has been taken and if so, the nature of such police action and whether related actions have been filed and the manner by which these actions were disposed. The form also requires information on the particular facts surrounding the incident, including presentation of relevant documents. The objective of the post-action protocol is to provide procedures for early discovery of relevant facts to enable parties to properly assess the merits of their claims or defenses which may, in turn, contribute to the early settlement of the case.

15. PDRC also provides other forms of CDR for civil disputes such as Mediation-Arbitration (Med-Arb), Court Dispute Resolution International (CDR-I) and co-mediation with experts. Med-Arb employs features of both mediation and arbitration through a settlement judge who meets with the parties with a view to arriving at a settlement of as many issues as possible on the case. The remaining issues are then resolved through arbitration. Arbitration is conducted through a registrar of the Subordinate Courts whose decision will be binding on the parties. CDR-I is a method of co-mediation conducted by judges of the Subordinate Court together with judges of other common law or civil law jurisdictions namely England, Australia, New Zealand, Norway and the United States of America. It is conducted via video-conference and only deals with issues of fact. Techniques of early neutral evaluation are utilized in CDR-I with the Singapore judge acting as the primary judge in the settlement process. Through CDR-I, the parties are given an indication by the judges on the probable outcome of the dispute after considering the claims and defenses of the parties. Where necessary, the judges may also assist the parties in arriving at practical solutions to the dispute. Co-mediation with experts is co-mediation involving a settlement judge and an expert appointed by the PDRC. This CDR process will be applied to disputes involving technical or specialized issues.

16. CDR in the Subordinate Courts has been a celebrated success. From a caseload of 1,133 in 1995, and a settlement rate of 89%⁴, it increased to the 4,703 cases in 1999 with 97% settlement rate. In 2004, 8,778 cases were mediated at the e@dr with 6,505 cases disposed of.

Small Claims Tribunal

17. The Small Claims Tribunals were established in 1985 to hear claims relating to disputes arising from any contract for the sale of goods or provision of services⁵. Previously, cases were heard by a Referee who is a Magistrate of the Subordinate Court.

⁴ Statistics and Planning Unit, Subordinate Courts, from *The Mediator*, publication of the Court Mediation Centre, Subordinate Courts Issue No. 1 May 1996.

⁵ *Ibid* s.5

Since the inception of mediation in the Subordinate Courts, the Small Claims Tribunals has sought to mediate its cases.

The Family Court

18. The Family Court was established in 1995 and mediation was introduced for divorce cases and matters ancillary to divorce. Depending on the type of case involved, mediations are conducted by court interpreters, trained counsellors and a Registrar of the Family Court. Cases are normally divided according to the issue at hand and the severity of the case. Issues requiring legal input such as those involving maintenance and custody issues are mediated by the Registrar, a judicial officer. Cases involving more emotional issues are mediated by one of 3 trained counsellors. Complaints relating to matrimonial disputes are handled by court interpreters who usually assist parties in completing the complaint form, and there attempt a form of mediation. The Family Court mediated over 6,932 cases in 2005 and 3,313 cases from January to June 2006 achieving settlements in 92.2% of the cases for 2005 and 88% of the cases in 2006⁶.

19. On 19 May 2006, the Subordinate Courts formally launched the Family Relations Centre (“FRC”). Due to the remarkable increase in the number of family-related disputes filed with the Family Court and recognizing that the resolution of these disputes may not simply involve the resolution of legal issues, the FRC was set up under the auspices of the Family Court. The FRC comprises a team of judges with extensive mediation experience, psychologists, counsellors and support staff with the aim of assisting the settlement of often emotional family disputes outside of a court setting. The FRC takes a multi-modal approach in resolving disputes which may involve counselling, parenting consultations or workshops.

20. The FRC conducts Resolution Conferences presided by a Resolution Judge who evaluates the case and assists in mediating the dispute between the parties. The Resolution Judge may recommend that parties undergo counseling or other forms of therapy that may improve the relationship of the parties or allow parties to have a better perspective of the issues involved. Joint Conference sessions may also be conducted by

⁶Centre for Research, e-Innovation and Statistics (CReST), Subordinate Courts.

mediation involving the joint participation of a Resolution Judge and a psychologist or counsellor. From January to June 2006, 84% of the cases brought before the FRC were successfully settled. The settlement rate for matters dealing with individual issues such as custody, care and control, spousal and/or child maintenance was between 83% and 97%.

The Tribunal for the Maintenance of Parents

21. In 1996, the Maintenance of Parents Act⁷ was promulgated “to make provision for the maintenance of parents by their children and for matters connected therewith. ...”. The Act was intended to provide for the maintenance of aged parents by adult children who were remiss in their filial duties. Under the Act, any person over the age of 60 years and unable to maintain himself or herself may apply to the Tribunal for the Maintenance of Parents⁸ for an order to be made against one or more of his children that he be paid a monthly allowance or a lump sum for his maintenance⁹.

22. Provision is made for reference of problems to mediation. Section 5, for example, provides for the maintenance orders to be made by the Tribunal, and before hearing an application for such an order, may refer the matter to mediation.

Bankruptcy Mediation Unit

23. The Insolvency and Public Trustee’s Office has a Bankruptcy Mediation Unit since 1999 to resolve differences between the bankrupt and creditors such as quantum and nature of claims and negotiate settlement. In 2005, the Bankruptcy Mediation Unit mediated a total of 129 post-bankruptcy cases and 51 cases (39.8%) were successfully resolved. As a result, 168 creditors were paid dividends from the bankrupt’s estate.

⁷ Cap. 167B, 1996 Rev. Ed.

⁸ Established by Section 13 of the Act

⁹ Section 3 (1)

Non-Court Based Mediation and Conciliation

24. Apart from the government and quasi-governmental institutions involved in mediation, private institutions have also taken on mediation as a means of dispute resolution. The leading ADR institutions in Singapore are the Singapore International Arbitration Centre ["SIAC"] and the Singapore Mediation Centre ["SMC"], both of which are owned by the Singapore Academy of Law, a body presided by the Chief Justice and governed by a Senate most of whose members are also judges of the Supreme Court.

Singapore International Arbitration Centre["SIAC"]

25. The SIAC was set up in July 1991 and is primarily concerned with the promotion of international arbitration. From 2000 up to December 2005 she has administered over 400 cases most of which are of an international nature (62.4%). Arbitral tribunals in Singapore have been given very extensive powers including powers to grant injunctive relief, issuing interim injunctions to prevent dissipation of assets, ordering security to be provided for costs and the amount claimed pending the making of the award¹⁰. Arbitral awards are enforceable as judgments of the High Court. Foreign awards made in Convention¹¹ countries are recognized and enforced in the same manner as judgments of the court. The SIAC has published rules of arbitration for both international and domestic arbitrations.

Singapore Mediation Centre ["SMC"]

26. The Singapore Mediation Centre was officially launched on 16 August 1997 as Singapore's leading institution for the administration and promotion of mediation and ADR processes. The Singapore Mediation Centre aims to develop its expertise in, and standing as, an independent ADR institution specialising in mediation. It will take the lead in promoting private, non court-based mediation in Singapore and serve the public sector, professions and businesses. Describing it as the "flagship mediation centre", the

¹⁰ Section 12, International Arbitration Act Cap 143A

¹¹ UN Convention for the Recognition and Enforcement of Foreign Arbitral Awards, 1958

Chief Justice said that the SMC “*will also provide mediation services, train and accredit mediators, maintain a Panel of Mediators (“Panel”), and eventually, provide consultancy services in dispute avoidance, dispute management and ADR mechanisms, both locally and abroad.*”¹²

27. As at 1 April 2006, more than 1,000 cases have been referred to mediation at the SMC. Co-mediation (i.e. use of 2 mediators) is a common feature of SMC mediation. The average settlement rate for completed mediations is 75%. Settlements reached in mediation are normally documented in writing and enforceable as contract. If parties desire, an arbitral award could be made to give the settlement agreement better enforceability. So far, there has not been any case of breach of a settlement agreement reached through SMC mediation.

Others

28. There are several other industry-specific bodies that advocate the use of ADR in resolution of disputes e.g.

29. NATAS (National Association of Travel Agents, Singapore) set up in 1998 has a service bureau to handle consumer complaints against travel agents. They charge \$10 (for members) and S\$30 (non-members) to handle the complaints through mediation. In 1999, they resolved 95% of the 256 complaints. Since 1999, NATAS no longer provides such services and recommends consumers to submit their complaints to the Consumers Association of Singapore (CASE) or to the Small Claims Tribunal.

30. RADAC (Renovation and Decoration Advisory Centre) has a dispute resolution programme since 1995 to resolve renovator and customer disputes such as delay in renovation or alleged defective work. They charge \$50 administrative fee and mediate disputes. Over the last 5 years, cases formally lodge in for mediation has gradually reduced due to assistance rendered by RADAC on inquiries from homeowners. There were 44 cases in 2001, 19 cases in 2000, 7 cases in 2003, 3 cases in 2004, 1 case in 2005 and for 2006, 1 case has been filed. 80% of the cases filed are successfully resolved through mediation.

¹² Opening Address made at the launch of the Singapore Mediation Centre, 16 August 1997.

31. REDAS (Real Estate Developers Association, Singapore) has a conciliation panel since 1991 to resolve disputes between home buyers and developers through 'binding conciliation'. Panel members make site inspections and take a common sense approach. No data is available as to their caseload.

32. FIDReC (Financial Industry Disputes Resolution Centre Ltd) handles dispute resolution matters between financial institutions and consumers. At present, FIDRec's services are available to individual consumers and sole proprietors. FIDRec has jurisdiction to adjudicate disputes between the insured and insurance companies with a claim amount of up to S\$100,000 and disputes between banks and consumers, capital market disputes and all other disputes (including third party claims and market conduct claims) for a claim amount of up to S\$50,000.¹³

33. The development of mediatory processes in Singapore is actively encouraged by the Government as evident from the various legislative references e.g. disputes with or between architects [Architects (Professional Conduct and Ethics) Rules 2001]; housing developers and purchaser disputes [Housing Developers Rules (Amended Dec 1999); Executive Condominium Housing Scheme Act Cap 99A (Schedule)]; complaints against solicitors [Legal Profession (Inadequate Professional Services Complaint) Rules 1998]; disputes over government procurement contracts [Government Procurement Act Cap 120 as amended May 1998].

Organisation of Arbitration

Framework of Arbitration in Singapore

34. Two separate legal regimes govern the conduct of arbitration in Singapore. Where the *situs* (place/seat) 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

¹³ See www.fidrec.com.sg

arbitration where the place of arbitration is Singapore and where Part II of the IAA (on International Commercial Arbitration) does not apply.¹⁴ 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.¹⁵ The IAA gives the Model Law, with the exception of Chapter VIII thereof (on Recognition and Enforcement of Awards), “the force of law in Singapore.”¹⁶ Under the IAA, an arbitration is international if

(a) at least one of the parties has its place of business¹⁷ 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.¹⁸

35. The distinction between the two legal regimes primarily lies in the degree of court intervention in the arbitral process and respect for party autonomy.¹⁹ Under the

¹⁴Sect. 3, Arbitration Act.

¹⁵Sect. 5(1) IAA.

¹⁶Sect. 3(1) IAA.

¹⁷ Sect. 5(3)(a) IAA provides that if the party has more than one place of business, the place of business shall be the one which has the closest relationship to the arbitration agreement. Sect. 5(3)(b) IAA provides that if a party does not have a place of business, a reference to his place of business shall be construed as a reference to his habitual residence.

¹⁸Sect. 5(2) IAA.

international arbitration regime, court intervention is limited and restricted to instances expressly provided by law.²⁰ There are also limited instances of recourse against the arbitral award under the IAA. 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.²¹ The Arbitration Act also allows the parties to apply to the court to determine any question of law arising in the course of the arbitration proceedings which substantially affects the rights of the parties.²²

36. The operation of the dual-track arbitration regime in Singapore allows the parties the facility of opting into or out of a particular regime as 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.²³ 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.²⁴

¹⁹ See further discussion below.

²⁰ *Mitsui Engineering and Shipbuilding Co Ltd v Easton Graham Rusb and Another* [2004] 2 SLR 14 (High Court).

²¹ Sect. 49, Arbitration Act.

²² Sect. 45, Arbitration Act.

²³ Sect. 15(1), IAA.

²⁴ Sect. 5(1) IAA. Sect. 15 IAA.

Conduct of Arbitration

37. Arbitration in Singapore may be conducted under *ad hoc* rules or administered by an arbitration institution. The Singapore International Arbitration Centre (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 1976.²⁵

38. 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.²⁶ 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.²⁷ Aside from the appointment of the arbitrator,²⁸ other services offered by the SIAC include financial management,²⁹ administrative functions and the provision of facilities and logistics in connection with arbitration hearings.

39. Where a case is conducted according to SIAC's arbitration rules, parties pay a management fee and no separate fee has to be paid for the appointment of the arbitrator. In cases falling outside SIAC's arbitration rules, where SIAC is only asked to appoint an arbitrator, an appointment fee is charged. The management fee is pegged to the amount of the claim or counterclaim according to a scale. The arbitrator appointment fee, on the other hand, is a flat fee, not dependent on the amount of claim.

²⁵As adopted by UNCITRAL on 28 April 1976; see ILM (1976) p. 701 and ICCA *Yearbook Commercial Arbitration* (hereinafter *Yearbook*) II (1977) pp. 161-171.

²⁶However, parties are free to appoint their own arbitrator if so provided in the arbitration agreement.

²⁷By Gazette Notification No. 1656 and No. 1653 published on 2 July 2004; Sect. 8(2) IAA read with Art. 11(3) and (4) Model Law, IAA; Sect. 13, Arbitration Act.

²⁸The SIAC will search and select suitable candidates to be arbitrator, conduct conflict checks and negotiate and fix fees with the arbitrator.

Representation in Arbitration Proceedings; Foreign Lawyers

40. While lawyers are normally engaged for arbitration proceedings, parties may be represented by any person of their choice. Where the applicable law is Singapore law, a recent amendment has been made to the Legal Profession Act (Cap. 161)³⁰ such that persons not authorized to practise law in Singapore are allowed 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. However, foreign lawyers do not have any right of audience in court proceedings.³¹ Where the applicable law is *not* Singapore law, foreign lawyers (and other persons not authorised to practise law in Singapore) have, since 1992,³² been permitted by the pre-amendment Legal Profession Act to represent parties in arbitration proceedings including appearing at hearings in the arbitration.

The Arbitral Process

Arbitration Agreement

41. 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.³³ It may take the form of

²⁹The SIAC will, *inter alia*, act as intermediary for the collection and disbursement of moneys for parties and prepare regular statements of account and ensure that the arbitrator keeps a running and detailed record of time.

³⁰The amendment was introduced via the Legal Professional (Amendment) Bill 2004 (B17/2004) which was passed in Parliament on 15 June 2004 and was made effective on 14 September 2004.

³¹ Section 35(1), Legal Profession Act.

³² This amendment was made in March 1992 following a High Court decision in *Turner (East Asia) Pte Ltd v. Builder's Federal (Hong Kong) Ltd & Anor.* [1988] 2 MLJ 280.

³³ Sect. 4(1), Arbitration Act.

an arbitration clause in a contract or the form of a separate agreement.³⁴ 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.³⁵

42. Both the Arbitration Act and the IAA further provide 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.³⁶

(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.³⁷

43. No specific words or form are required to give effect to an arbitration agreement but the intention to arbitrate must be clear and unequivocal.³⁸

44. The IAA and the Arbitration Act expressly provide that an arbitration agreement is independent of the other terms of the contract.³⁹ The doctrine of

³⁴ Sect. 4(2), Arbitration Act. Sect. 4(1) and (2) of the Arbitration Act correspond to Art. 7(1) of the Model Law.

³⁵Sect. 4(3), Arbitration Act. This provision is similar to that in Art. 7(2) of the Model Law.

³⁶Sect. 2(3), IAA; Sect. 4(4), Arbitration Act.

³⁷ Sect. 2(4), IAA; Sect. 4(5), Arbitration Act.

³⁸ A commonly used arbitration clause is the SIAC Model Arbitration Clause:

“Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in [Singapore] in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (“SIAC Rules”) for the time being in force which rules are deemed to be incorporated by reference to this clause.”

Parties may add:

“The tribunal shall consist of ... arbitrator(s) to be appointed by the Chairman of SIAC.”

“The governing law of this contract shall be the substantive law of”

“The language of the arbitration shall be”

³⁹ Art. 16(1) Model Law, IAA, Sect. 21(2) Arbitration Act.

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

45. 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”.⁴⁰ This power is, however, subject to an appeal which may be brought to the High Court⁴¹ if the arbitral tribunal rules that it has jurisdiction.⁴² A further appeal to the Court of Appeal on this issue is permitted with leave of the High Court.⁴³

46. 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. Under the Arbitration Act, the right to apply for a stay of court proceedings exists only if:⁴⁴

- 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.

⁴⁰ Art. 16(1) Model Law, IAA; Sect. 21, Arbitration Act.

⁴¹ Art. 16(3) Model Law, IAA read with Art. 6 Model Law and Sect. 8(1) IAA. See also Sect. 21(9) Arbitration Act.

⁴² If the tribunal rules that it has no arbitral jurisdiction, the matter ends there with no appeal.

⁴³ Sect. 10 IAA. However, Sect. 10 IAA further states that the High Court’s refusal to grant leave to appeal to the Court of Appeal is not appealable. Note that there is no such express restriction in the Arbitration Act.

⁴⁴ Sect. 6, Arbitration Act.

47. The power to grant stay under the Arbitration Act is discretionary.⁴⁵ 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, under the IAA a stay is mandatory: 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”.⁴⁶ 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.

48. 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.⁴⁷ 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.⁴⁸

Appointment of Arbitrators

49. Apart from specific requirements imposed by the parties and the requirements of independence and impartiality, there are no special qualifications required of any arbitrator.⁴⁹ Arbitrators may be of any nationality⁵⁰ and need not be

⁴⁵ Sect. 6(2), Arbitration Act.

⁴⁶ Sect. 6(2) IAA; Sect. 6(4), Arbitration Act.

⁴⁷ Sect. 6(3), IAA; Sect. 6(3), Arbitration Act.

⁴⁸ Sect. 6(4), IAA.

⁴⁹ That the arbitrator does not possess the qualifications agreed to by the parties is one of the grounds on which the arbitrator may be challenged: Art. 12(2) Model Law and Sect. 14(3)(b) Arbitration Act.

⁵⁰ Art. 11(1) Model Law, IAA.

legally trained although many of the arbitrators in Singapore are lawyers. Many arbitrators in Singapore would also have had some training in the law and conduct of arbitration.⁵¹

50. 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,⁵² the IAA⁵³ and the SIAC Rules.⁵⁴ The duty to disclose is ongoing, and runs from the time of appointment and continues throughout the arbitration proceedings.⁵⁵

51. 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.⁵⁶ Such circumstances include a personal, business or professional relationship with the parties to the dispute, or an interest in the outcome of the dispute.⁵⁷ 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 facts would have a reasonable suspicion that a fair trial for the applicant would not be possible.⁵⁸

⁵¹Many of the arbitrators are members of the Singapore Institute of Arbitrators and/or the Chartered Institute of Arbitrators, London, although membership in such institutions is not a condition for acting as arbitrator.

⁵²Sect. 14(1), Arbitration Act.

⁵³Art. 12 Model Law, IAA.

⁵⁴ Rule 11.3, SIAC Rules.

⁵⁵ Sect. 14(2), Arbitration Act, Art. 12(1), Model Law, IAA.

⁵⁶ Sect. 14(3), Arbitration Act, Art. 12(2), Model Law, IAA.

⁵⁷*R v. Bow Street Metropolitan Stipendiary Magistrate and Ors Ex parte Pinochet Ugarte (No. 2)* [1999] 2 WLR 272.

⁵⁸*Jeyaratnam Joshua Benjamin v. Lee Kuan Yew* [1992] 2 SLR 310, following the test laid down by the English case of *R v. Liverpool City Justices ex p. Topping* [1983] 1 WLR 119; *Turner (East Asia) Pte Ltd v. Builders Federal (Hong Kong) Ltd & Anor* [1988] SLR 532.

52. Parties are at liberty to agree on the number of arbitrators. In the absence of an agreed number, a single arbitrator is presumed.⁵⁹ 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.⁶⁰

53. 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.⁶¹ Where the SIAC Rules are applicable, the process and the appointment will be made by the Chairman of the SIAC unless an appointing authority is agreed.⁶²

54. Under the IAA, where the reference 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.⁶³ 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.⁶⁴

55. 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

⁵⁹ Sect. 12(2), Arbitration Act; Sect. 9, IAA and Rule 6, SIAC Rules. Note that Sect. 9, IAA modifies Art. 10(2) Model Law.

⁶⁰ Sect. 19, Arbitration Act and Art. 29 Model Law, IAA requires that the award be made by a majority of the arbitrators. It sometimes happens that parties agree to two arbitrators and further agree that, should the two arbitrators not agree, the matter will be referred to a third person as an umpire. However, this practice is not very common. It is also possible (although less probable) that a tribunal of an odd number of arbitrators may not be able to reach decision by a majority if each maintains his own view and decision. The SIAC Rules provide that, in such a situation, the decision of the presiding arbitrator shall be binding (Rule 28.3 SIAC Rules).

⁶¹ Sect. 13(3)(b) Arbitration Act, Art. 11(3)(b) Model Law, IAA read with Art. 6 Model Law and Sect. 8(2) IAA.

⁶² Rules 7 and 8 SIAC Rules.

⁶³ Sect. 9A, IAA.

⁶⁴ Sect. 13(4) Arbitration Act, Sect. 9A IAA.

have not agreed on a default procedure), the Deputy Chairman of the SIAC is empowered to take the necessary measures.⁶⁵

56. 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.⁶⁶ 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 doubt as to independence and impartiality and (b) lack of qualifications agreed by the parties.⁶⁷

Arbitral Procedure

57. Where Singapore is the place of arbitration, the parties are generally free to choose the procedure of arbitration.⁶⁸ If there is no agreement between the parties as to the procedure, the tribunal conducts the arbitration in a manner that it considers appropriate.⁶⁹ 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.⁷⁰ 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.⁷¹

⁶⁵ *Supra* note 13. Sect. 13(5) Arbitration Act; Art. 11(4) Model Law, IAA.

⁶⁶ Art. 11(5) Model Law, IAA.

⁶⁷ Sect. 13(7) Arbitration Act states that “No appointment by the appointing authority shall be challenged except in accordance with this Act”.

⁶⁸ Sect. 23(1), Arbitration Act; Art. 19(1) Model Law, IAA.

⁶⁹ Sect. 23(2), Arbitration Act; Art. 19(2) Model Law, IAA.

⁷⁰ Sect. 24, IAA; Art. 23 Model Law, IAA.

⁷¹ Rule 17, SIAC Rules.

58. 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 IAA⁷² and/or the SIAC Rules,⁷³ 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.

59. 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.⁷⁴ 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.⁷⁵

60. 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.⁷⁶ The powers conferred by the IAA on the tribunal are similar.⁷⁷ 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.⁷⁸ Security may be furnished by cash deposits⁷⁹ or by way of bank guarantees or

⁷² Art. 24(1), Model Law, IAA; Sect. 25, Arbitration Act.

⁷³ Rule 22.1, SIAC Rules.

⁷⁴ Sect. 2(1), Evidence Act Cap. 97.

⁷⁵ Art. 19(2), Model Law, IAA; Sect. 23(3), Arbitration Act.

⁷⁶ Sect. 28(2), Arbitration Act.

⁷⁷ Set out in Sect. 12, IAA.

⁷⁸ Sect. 12(g), IAA and Sect. 12(1)(e) IAA. There is no similar power for arbitrators under the Arbitration Act. Only the High Court has the power to grant interim injunctions and/or any other interim measures or order to secure the amount in dispute: Sect. 31(1)(b) and (d), Arbitration Act.

solicitor's undertakings. 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.⁸⁰

61. 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.⁸¹

62. The powers granted to arbitrators in the Arbitration Act and the IAA are concurrently exercisable by the High Court.⁸² 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.

63. 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.⁸³

Arbitral Awards

64. 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”.⁸⁴ The definition specifically excludes any orders or directions made

⁷⁹SIAC Trust Account.

⁸⁰Rule 25(g), SIAC Rules; Sect. 12(1)(d), IAA; Sect. 28(2)(g), Arbitration Act.

⁸¹Sect.12(5), IAA; Sect. 28(4), Arbitration Act.

⁸²Sect. 12(6), IAA; Sect 31(1)(a), Arbitration Act.

⁸³There is no equivalent provision in the IAA.

⁸⁴Sect. 2(1), IAA; Sect. 2(1), Arbitration Act.

pursuant to the statutory powers conferred on the arbitrator in both Acts.⁸⁵ An “interim” award refers to an award that is not the final (last) award in the arbitration. The term “interim award” has been used for awards relating to 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 has 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.⁸⁶

65. There is no statutory time limit for a tribunal to make its award either under the Arbitration Act or the IAA.⁸⁷ 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.⁸⁸ 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 all parties agree otherwise.⁸⁹

66. 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.⁹⁰ The award must give reasons unless the parties agree otherwise or

⁸⁵Sect. 28, Arbitration Act and Sect. 12, IAA.

⁸⁶Sect. Sect. 28, Arbitration Act and Sect. 12, IAA.

⁸⁶Sect. 46, Arbitration Act; Sect. 19, IAA.

⁸⁷An arbitrator acting under the Arbitration Act who fails to use reasonable dispatch in making the award, however, risks being removed by the court, provided it can be shown that the delay causes substantial injustice to the party applying for the removal. *See* Sect. 16(1)(b), Arbitration Act.

⁸⁸ Sect. 36, Arbitration Act.

⁸⁹ Rule 28.1, SIAC Rules.

⁹⁰ Art. 31(1), Model Law, IAA; Sect. 38(1)(b), Arbitration Act; Rule 28.3, SIAC Rules.

the award is an award on agreed terms.⁹¹ The award must state the date and place of arbitration.⁹²

67. Where the SIAC Rules apply, the award is to be delivered to the Registrar of the SIAC, who will cause authenticated copies⁹³ 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.

68. An award once made⁹⁴ is valid and binding on the parties⁹⁵ 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

69. 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”.⁹⁶ Corrections may be made on the tribunal’s own initiative or at the request of any of the parties to the tribunal within thirty

⁹¹Sect. 38(2), Arbitration Act; Art. 31(2), Model Law, IAA.

⁹²Art. 31(3), Model Law, IAA; Sect. 38(3), Arbitration Act.

⁹³In practice, where the award involves parties from different jurisdictions, a certificate of authentication is attached to the award to facilitate enforcement under the New York Convention 1958.

⁹⁴Sect. 19B(3) IAA, and Sect. 44(3), Arbitration Act provide that the award is made when it is “signed and delivered” in accordance with Art. 31 Model Law and Sect. 38 Arbitration Act respectively.

⁹⁵Sect. 44(1), Arbitration Act; Sect. 19B, IAA.

⁹⁶ Art. 33(1)(a), Model Law, IAA; Sect. 43(1)(a), Arbitration Act.

days of the receipt of the award.⁹⁷ Under the Arbitration Act and the IAA, the period of thirty days may be extended by the tribunal, on the ground of necessity.⁹⁸

70. Parties may also apply to the tribunal for an interpretation of a specific point or part of the award.⁹⁹ 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.

71. 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).¹⁰⁰ 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.¹⁰¹ The IAA and the Arbitration Act provide that the additional award shall be made within sixty days.¹⁰²

Appeal Against the Award

72. 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.

73. Appeals to a court against awards on the merits are permissible only in arbitrations under the domestic Arbitration Act.¹⁰³ The right of appeal can be excluded

⁹⁷Art. 33(1) and (2), Model Law; Sect. 43(1), Arbitration Act; Rules 29.1 and 29.2, SIAC Rules.

⁹⁸Art. 33(4), Model Law, IAA; Sect. 43(6), Arbitration Act. The SIAC Rules are silent on the matter of extension of time.

⁹⁹Art. 33(1), Model Law, IAA; Sect. 43(2), Arbitration Act.

¹⁰⁰Art. 33(3), Model Law, IAA; Sect. 43(4), Arbitration Act; Rule 29.3, SIAC Rules.

¹⁰¹Rule 29.3, SIAC Rules.

¹⁰²Art.33(3) , Model Law, IAA; Sect.43(5), Arbitration Act.

¹⁰³Sect. 49, Arbitration Act. No appeal is permitted under the IAA.

by agreement.¹⁰⁴ 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.¹⁰⁵

74. Before granting leave to appeal, the court must be satisfied that:¹⁰⁶

(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.

75. 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.¹⁰⁷

Setting Aside the Award

76. Arbitral awards made under the Arbitration Act may, apart from being set aside on appeal, be also set aside if:¹⁰⁸

¹⁰⁴Sect. 49(2), Arbitration Act.

¹⁰⁵Sect. 50(3), Arbitration Act.

¹⁰⁶ Sect. 49, Arbitration Act.

(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

¹⁰⁷These remedies are correction or interpretation of award and additional award. Sect. 50(2) Arbitration Act.

(ii) the award is contrary to public policy.

77. 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.¹⁰⁹ 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.

78. Under both the Arbitration Act and the IAA, the application to set aside an award must be made by originating motion within three months from the date of receipt of the award by the applicant.¹¹⁰

Enforcement of Arbitral Awards

79. Enforcement of arbitral awards made in Singapore by way of execution proceedings, whether in a domestic¹¹¹ or international arbitration,¹¹² requires the leave of the court. Applications are made to the High Court.¹¹³ In cases of urgency, *ex parte* applications are permissible on such terms as may be imposed by the court.¹¹⁴ If leave to enforce an award is refused, an appeal may be made to the Court of Appeal within one

¹⁰⁸ Sect. 48, Arbitration Act.

¹⁰⁹ Art. 34, Model Law, IAA. Under the IAA, the High Court may, in addition to the grounds enumerated in the Model Law, set aside an award if the making of the award was induced or affected by fraud or corruption, or 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. *See* Sect. 24, IAA

¹¹⁰ Awards under IAA: Art 34(3), Model Law, IAA, Order 69A, Rule 2(4), Rules of Court 1996; Award under Arbitration Act: Sect. 48(2), Arbitration Act, Order 69, Rule 2(1), Rules of Court 96.

¹¹¹ Sect. 46(1), Arbitration Act.

¹¹² Sect. 19, IAA.

¹¹³ As for procedure, see Order 69 and Order 69A, Rules of Court 1996.

¹¹⁴ Order 69A, Rule 3(3), Rules of Court 1996.

month from the date the order refusing leave is made.¹¹⁵ The application for leave to enforce the award must be made within six years after the award is made.¹¹⁶

80. 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.¹¹⁷ 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.

81. 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.¹¹⁸ An appeal against the order granting leave to enforce the award would not operate as a stay or suspension of execution.¹¹⁹ 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.¹²⁰

82. 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 Sect. 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.¹²¹ An award made under the IAA may only be refused

¹¹⁵Order 57, Rule 4, Rules of Court.

¹¹⁶ Sect. 6, Limitation Act Cap. 163.

¹¹⁷ Order 69A, Rule 6, Rules of Court.

¹¹⁸Order 57, Rule 4, Rules of Court 1996.

¹¹⁹Order 57, Rule 15, Rules of Court 1966.

¹²⁰Sect. 36(1), Supreme Court of Judicature Act Cap. 322.

¹²¹ Para. 254 of Michael Hwang S.C. and Andrew Chan's Singapore Chapter in Michael Moser, gen. ed., *Arbitration in Asia* (Butterworths 2001).

enforcement if the grounds for setting aside, being the exclusive recourse against the award, exist.¹²²

83. 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 action¹²³ 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.¹²⁴ 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.¹²⁵

84. 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.¹²⁶ 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.

¹²²Including grounds on the existence of fraud, corruption and the breach of natural justice, being additional grounds to set aside the award under the IAA.

¹²³Where an action arises out of an award on a salvage award or a claim under a charterparty, it falls within the Admiralty jurisdiction of the High Court and an action *in rem* could be brought. See *Alexander G Tsaviris & Sons Maritime Co v. Keppel Corp Ltd* [1995] 2 SLR 113.

¹²⁴Sect. 19, IAA read with Sect. 29 of the IAA

¹²⁵Sect. 29(2), IAA.

¹²⁶Sect. 6(1)(c), Limitation Act Cap. 163.

85. 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.¹²⁷ The award shall not be enforced during the pendency of the application and until after it is finally disposed of.¹²⁸

86. 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.¹²⁹ These grounds are identical to those set out in Art. V of the New York Convention.¹³⁰ An appeal against the decision of the High Court on the enforcement of a foreign award can be made to the Court of Appeal.¹³¹

87. Following a recent 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

¹²⁷Order 69A, Rule 6(4), Rules of Court 1996.

¹²⁸Order 69A, Rule 6(4), Rules of Court 1996. The rationale here is to give the debtor the opportunity to contest the enforcement of the award under Art. V of the Convention as the first order would have been obtained *ex parte* without the debtor being heard.

¹²⁹Sect. 31(2) IAA provides as follows:

A court so requested may refuse enforcement of a foreign award if the person against whom enforcement is sought proves to the satisfaction of the court that —

- (a) a party to the arbitration agreement in pursuance of which the award was made was, under the law applicable to him, under some incapacity at the time when the agreement was made;
- (b) the arbitration agreement is not valid under the law to which the parties have subjected it or, in the absence of any indication in that respect, under the law of the country where the award was made;
- (c) he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case in the arbitration proceedings;
- (d) subject to subsection (3), the award deals with a difference not contemplated by, or not falling within the terms of, the submission to arbitration or contains a decision on the matter beyond the scope of the submission to arbitration;
- (e) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- (f) the award has not yet become binding on the parties to the arbitral award or has been set aside or suspended by a competent authority of the country in which, or under the law of which, the award was made.”

¹³⁰The Singapore courts have yet to refuse enforcement of any Convention award. As at December 1994, more than 30 awards have been enforced.

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.¹³²

ICSID and Foreign Judgments

88. 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) Rules¹³³ read with Order 67 of the Rules of Court (1997 ed.).¹³⁴ To date, no attempt has been made to enforce an ICSID award in Singapore.

89. An arbitral award made in England or in any of those Commonwealth jurisdictions¹³⁵ 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.¹³⁶ 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.¹³⁷

¹³¹Sect. 29A, Supreme Court of Judicature Act (Cap. 322).

¹³² Sect. 46(1) read with 46(3) of the Arbitration Act

¹³³Cap. 11, Rule 1. The ICSID Convention has been given statutory force in the Arbitration (International Investment Disputes) Act (Cap 11).

¹³⁴Cap. 322, Rule 5; Rule 2(2) of the Arbitration (International Investment Disputes) Rules stipulates that Order 67 of the Rules of Court (1997 ed.) shall apply, with the necessary modifications, to awards made under the ICSID Convention as it applies to any judgments to which Part II of the Reciprocal Enforcement of Foreign Judgments Act Cap. 265 (REFJA) applies. Order 67 of the Rules of Court (1997 ed.) sets out the procedure for the registration of foreign judgments to which the REFJA relate.

¹³⁵ Reciprocal Enforcement of Commonwealth Judgments (Extension) (Consolidation) Notification NI, 1999 Rev. Ed. lists the territories to which the Act extends. For Australia, see Declaration under Sect. 5 (Cap. 264, Declaration 1) (24 September 1993).

¹³⁶Reciprocal Enforcement of Commonwealth Judgments Act Cap. 264 (RECJA).

¹³⁷This procedure is still needed for countries, like Pakistan, which are not New York Convention countries.

90. An application for registration of a judgment based on such a Commonwealth award must be made within twelve months after the date of the judgment. The court hearing the application has the discretion, if it is “just and convenient” to allow enforcement of the judgment in Singapore.¹³⁸ 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.¹³⁹

Certification and Authentication of Awards for enforcement overseas

91. 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.

92. 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 the SIAC Registrar whenever requested by a party. Such certification and authentication has 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.

93. 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:

¹³⁸Sect. 3, RECJA.

94. The award is made in Singapore or is an award made in an arbitration where the seat is Singapore.

95. 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.

- The award should be lodged within 3 months after the award is made.
- The Registrar may refuse lodgment of any award if he has some reason to doubt its authenticity.

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

Useful links:

Singapore International Arbitration Centre [www.siac.org.sg]

The Arbitration Chambers [www.arbiter.net]

Singapore Chamber of Maritime Arbitration [www.scma.org.sg]

¹³⁹Sect. 3(2), RECJA.