



Arbitration Guide
IBA Arbitration Committee

SINGAPORE

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I. Background

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

The use of arbitration in Singapore has been increasing. For example, the number of *new* cases administered by the Singapore International Arbitration Centre (SIAC) increased from 99 in 2008 to 343 in 2016.

This has, to a large extent, been a function of the Government's policy to develop Singapore as an international arbitration centre. The legislative framework was amended in 2010 and 2012 to strengthen support of international arbitration; an arbitration facility centre (Maxwell Chambers) was launched in 2010 with the Government's support. In 2017, plans were announced for Maxwell Chambers to be expanded to three times of its current size by 2019. The judiciary has also adopted a policy of minimal curial intervention.

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

That said, the Singapore courts are consistently ranked among the best judicial systems in Asia, and there is a perception that disputes may be resolved as quickly through litigation as for arbitration. A court judgment is seen to have more value in terms of enforcement locally. In addition, the court has the power to make orders affecting third parties, including joinder of parties and consolidation of proceedings; that may be seen as an advantage in certain cases, e.g. in complex transactions involving multiple parties and contracts. Amendments to the SIAC Rules in 2016 have sought to address these concerns, with the introduction of provisions dealing with multi-contract disputes, consolidation of arbitral proceedings prior to the constitution of the tribunal, and joinder of non-parties where the additional party is *prima facie* bound by the arbitration agreement or all parties consent to the joinder.

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

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

Arbitrations in Singapore are about evenly split between domestic and international disputes. That said, the number of international arbitrations that have been referred to the SIAC has been steadily increasing (274 cases in 2016, compared to 71 in 2008).

(iii) What types of disputes are typically arbitrated?

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

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

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

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

Parties may be represented by any person of their choice; there is no requirement that that person even be a lawyer.

Foreign nationals may act as counsel in Singapore arbitrations. The Singapore Legal Profession Act was amended in 2004 to expressly permit foreign lawyers to represent a party in Singapore arbitrations and give advice in relation thereto, even if the substantive law of the dispute is Singapore law. However, should a party to an arbitration wish to make an arbitration-related court application, it must retain Singapore counsel for that purpose. (The Singapore courts may grant the *ad hoc* admission of Queen's Counsel, but will only do so if considered reasonable in the circumstances of the case.)

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

II. Arbitration Laws

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

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

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

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

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

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

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

- (a) Chapter VIII of the Model Law is excluded (to avoid any inconsistency with Part III of the IAA which deals with enforcement of New York Convention awards);
- (b) if the number of arbitrators is not determined by the parties, there shall be a single arbitrator;
- (c) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the parties shall by agreement appoint the third arbitrator;
- (d) it expands the extent to which appeals against jurisdictional rulings under Article 16 of the Model Law may be brought (i.e. to the Court of Appeal if the aggrieved party has obtained the requisite leave of court) and permits recourse against negative rulings on jurisdiction
- (e) it adds provisions relating to appointment of conciliators; and
- (f) it adds two further grounds (additional to those set out in Article 34(2) of the Model Law) for the setting aside of an award.

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

The main difference between the IAA and the AA relates to the degree of court intervention in the arbitral process. For example, parties may appeal to a court

on a question of law arising out of an AA arbitration award; such appeals are not permitted under the IAA.

- (iii) **What international treaties relating to arbitration have been adopted (e.g. New York Convention, Geneva Convention, Washington Convention, Panama Convention)?**

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

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

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

III. Arbitration Agreements

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

Under both the IAA and the AA, an arbitration agreement may be entered into before or after a dispute has arisen. The arbitration agreement must be in writing. There is no requirement for specific words or form to constitute an arbitration agreement, but the wording used must express a clear and unequivocal intention to arbitrate. Mere silence, in and of itself, will not amount to an agreement to arbitrate.

The definition of an arbitration agreement under the AA and IAA has been broadened via legislative amendments in 2012, to include arbitration agreements concluded by any means (orally, by conduct or otherwise), so long as such agreement is subsequently recorded. This is in line with option I of Article 7 of the 2006 Amendments to the Model Law.

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

The law governing the arbitration agreement generally follows that of the substantive law of the main contract.

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

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

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

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

Non-compliance with the preliminary tiers may impact the validity of any arbitration commenced. Depending on the wording and intent of the clause, it could constitute a condition precedent to the commencement of arbitration, a breach of which may render the arbitration void for want of jurisdiction.

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

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

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

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

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

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

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

IV. Arbitrability and Jurisdiction

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

Both the IAA and AA recognize that any dispute is generally arbitrable in Singapore, unless an arbitration of such dispute is contrary to the public policy of Singapore or ‘not capable of settlement by arbitration’.

There is no exhaustive list of non-arbitrable matters; but some guidance can be drawn from a court decision which held that issues which ‘may have public interest elements’ such as citizenship or legitimacy of marriage or grants of statutory licences may not be arbitrable.

The issue of arbitrability is usually raised as a matter of jurisdiction. It may be raised before the arbitral tribunal as a preliminary challenge to the tribunal’s jurisdiction or before the courts as a ground to resist enforcement of an arbitration agreement, set aside the award, or resist enforcement of the award.

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

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

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

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

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

There is no time limit to make an application for a stay of court proceedings. However, the putative applicant for a stay of proceedings must be careful to

make the application before delivering any pleading or taking any step in the court proceedings. Such a step, if taken, could be construed as a waiver of the right to arbitrate.

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

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

Participation in the proceedings on the issue of jurisdiction *per se* does not constitute a submission to the tribunal's jurisdiction or consent to an ad hoc submission to arbitrate.

A dissatisfied party may appeal against a tribunal's finding of jurisdiction (whether positive or negative) to the High Court within 30 days from receipt of the tribunal's ruling. The courts generally interfere with the tribunal's findings only in exceptional circumstances.

Under the SIAC Rules, the Registrar will first determine whether an objection to the existence or validity of an arbitration agreement or the competence of SIAC to administer the intended arbitration should be referred to the Court of Arbitration of SIAC. If the Registrar so determines, the Court will then decide if it is *prima facie* satisfied that the arbitration shall proceed. The proceedings shall be terminated if the Court is not so satisfied. Any decision by the Registrar or the Court is without prejudice to the power of the tribunal to rule on its own jurisdiction.

V. Selection of Arbitrators

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

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

In the absence of an agreement, the AA, IAA and SIAC Rules all provide for default appointment of a single arbitrator. Under the SIAC Rules, the SIAC Registrar may appoint a three-arbitrator panel instead, if satisfied that it is warranted in the circumstances of the case.

Under both the IAA and AA:

- where parties have agreed on a sole arbitrator or the default of a sole arbitrator applies, parties are to agree to the joint nomination of the sole arbitrator; failing which, the arbitrator will be appointed by the President of the Court of Arbitration of SIAC;

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

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

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

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

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

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

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

The procedures in the AA and IAA are similar:

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

The court may make such order as it deems fit; and the court's decision is not appealable;

- pending the court's decision, the arbitration proceedings may continue and the arbitrator may even make an award.

The SIAC Rules provides a similar procedure, but with some key differences. In particular, the SIAC Registrar may suspend the arbitration pending resolution of the challenge; and the challenge is determined not by the tribunal, but by the Court of Arbitration of SIAC (reasoned decisions are issued by the Court of Arbitration on all challenges to arbitrators). The decision of the Court of Arbitration of SIAC is final and non-appealable.

A party may also request for an arbitrator to be removed upon death or resignation of an arbitrator, or where the arbitrator is physically and/or mentally incapable of conducting the proceedings or there are justifiable doubts on the same, or where the arbitrator has failed to fulfil his or her proper functions as an arbitrator or failed to use all reasonable despatch in conducting the proceedings or making an award, or where substantial injustice has been or will be caused to that party. In addition, under the SIAC Rules, if an arbitrator is not fulfilling his or her functions in accordance with the SIAC Rules or within the prescribed limits, the President of the Court of Arbitration of SIAC may, in his discretion and upon consultation with parties, remove the arbitrator.

The SIAC Rules further provide that, in the event of a replacement or substitution of a sole or presiding arbitrator, any hearings shall be repeated unless parties agree otherwise. If any other arbitrator is replaced or substituted, prior hearings may be repeated at the discretion of the tribunal, upon consultation with the parties. Where a partial or interim award had been made prior to the substitution, any hearings relating solely to that award shall not be repeated and the award shall remain in effect.

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

There are no nationality restrictions on the appointment of arbitrators.

The SIAC has issued a Code of Ethics for an arbitrator; SIAC-appointed arbitrators are required to confirm their agreement to abide by the Code.

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

Arbitrators in Singapore frequently refer to the IBA Guidelines on Conflicts of Interest in International Arbitration for guidance. In addition, as mentioned

above, the SIAC has published a Code of Ethics for arbitrators, which also addresses the issue.

VI. Interim Measures

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

Under both the IAA and AA, arbitrators have extensive powers to grant interim relief. For example, arbitrators can make orders or give directions to any party for security for costs, discovery of documents, answering of interrogatories, preservation of property which is part of the subject matter of the dispute, securing relevant evidence, securing the amount in dispute, freezing assets pending the award, or any other necessary interim injunction or relief.

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

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

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

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

The Court of Appeal has held that parties should, when seeking interim relief, turn to the arbitral tribunal as the first port of call.

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

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

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

Under the AA and IAA, any party to an arbitration may apply to the Singapore Courts for a subpoena to testify or a subpoena to produce documents; a subpoena if granted by the Court compels the attendance before an arbitral tribunal of a witness wherever he/she may be within Singapore. However, a party cannot be compelled to produced documents which he/she could not be compelled to produce in a civil trial of the action, e.g. if the documents are privileged.

VII. Disclosure/Discovery

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

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

Documentary evidence is typically viewed by Singapore tribunals as a generally reliable form of evidence, the veracity of witness testimony often being dependent on the witness's (occasionally self-serving) memory.

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

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

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

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

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

Electronic discovery is not yet the norm in Singapore arbitrations, although it is gaining favour. There are no applicable guidelines on control procedures for

handling data and inspection. This is generally left to the parties' agreement, but Singapore arbitrators may draw appropriate guidance from the Singapore courts' practice directions on electronic disclosure.

VIII. Confidentiality

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

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

Parties are under an implied undertaking not to use documents disclosed for any purpose other than the dispute or arbitration proceedings in which they were obtained. Disclosure or use of such documents can only take place with consent of the other party or by order of court where it is in the interests of justice or reasonably necessary. In addition, under the SIAC Rules, the tribunal has the power to take appropriate measures, including issuing an order or award for sanctions or costs, if a party breaches confidentiality of the arbitration.

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

Under the SIAC Rules, the SIAC may publish any award with the names of the parties and other identifying information redacted.

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

There are no specific provisions conferring power on the arbitral tribunal to protect trade secrets and confidential information. However, as mentioned above, parties are subject to an obligation of confidentiality in Singapore arbitrations which extends to all documents and information used/disclosed in the arbitration.

In addition, as mentioned above, the SIAC Rules empowers the tribunal the express power under the SIAC Rules to take appropriate measures, including issuing an order or award for sanctions or costs, if a party breaches confidentiality.

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

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

IX. Evidence and Hearings

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

In general, it is common that parties and tribunals in Singapore arbitrations refer to the IBA Rules on Evidence; it is also not uncommon for parties and tribunals to adopt the IBA Rules on Evidence as such.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Witness conferencing is used in Singapore arbitrations where considered appropriate by the parties and the tribunal, and typically where expert evidence is concerned. The questioning of the expert witnesses is led by the tribunal; the tribunal seeks to understand the experts' respective views and arguments as to why the other expert's opinion is incorrect. Thereafter, counsel may cross-examine the witnesses if considered necessary.

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

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

X. Awards

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

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

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

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

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

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

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

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

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

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

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

(iii) Are interim or partial awards enforceable?

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

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

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

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

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

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

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

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

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

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

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

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

Any party may request the tribunal to give an interpretation of a specific point or part of the award, with the agreement of all the other parties. Unless

otherwise agreed, requests for interpretation must be made within 30 days of the receipt of the award.

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

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

These powers to correct, amend or supplement the award do not empower the tribunal to review the award on its merits or to review the evidence. Matters which have been finally resolved in the earlier award cannot be revisited.

XI. Costs

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

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

Under the SIAC Rules, if the dispute is settled or disposed of without a hearing, the costs of the arbitration shall be determined by the SIAC Registrar.

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

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

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

In the absence of any agreement by the parties, the tribunal may decide on its own costs and expenses; subject to the parties' right to require that such fees be taxed by the SIAC Registrar.

Where the SIAC Rules apply, the tribunal's fees are determined in accordance with the SIAC's Schedule of Fees in force at the time of the commencement of the arbitration.

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

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

In apportioning costs, the tribunal may take into account the conduct of the parties in the arbitration, such as non-compliance with the tribunal's directions, obstructive conduct leading to wasted time or otherwise protracting the arbitration, gross exaggeration of claims and furnishing of unnecessary evidence on irrelevant issues or excessive evidence over non-substantive issues.

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

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

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

XII. Challenges to Awards

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

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

The grounds for setting aside a Singapore award mirror Article 34 of the Model Law, with two additional grounds:

- (a) The making of the award was induced or affected by fraud or corruption; or
- (b) A breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced.

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

The application must be made within 3 months from the date of receipt of the award. Challenge proceedings take approximately a year until final disposal (including any appeal from decision of first instance).

Challenge proceedings do not automatically stay any enforcement proceedings. However, the court may give directions for enforcement proceedings to be heard together with the challenge proceedings.

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

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

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

A party may appeal to the court on a question of law in domestic arbitrations arising out of an award under section 49 AA. Such appeals are not permitted in international arbitrations under the IAA. It should be noted that under section 49 AA, an agreement to dispense with reasons for the tribunal's award is deemed to be an agreement to waive the right to appeal against the award on a question of law.

The Singapore courts have emphasised that an error in the *application* of law is not subject to appeal.

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

Appeals on a question of law can only be made with the leave of court. Parties may also agree to dispense with the need to obtain leave to appeal.

The court will grant leave to appeal if satisfied that:

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

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

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

The court may remit an award, in whole or in part, to the tribunal. The courts generally prefer to remit the award (instead of setting it aside entirely) unless such order is inappropriate in the circumstances of the case.

XIII. Recognition and Enforcement of Awards

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

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

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

The order giving leave for enforcement, if granted, must be served on the award debtor. Within 14 days after the order is served or within such other period as the court may fix (where the order is served out of jurisdiction), the debtor may apply to set it aside and the *award shall not be enforced until after the expiration of such period* or, if the debtor applies to set aside the order within the same period, until after the application is finally disposed of.

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

The grounds for refusing the enforcement of a foreign award in Singapore mirror Article V of the New York Convention and Article 36 of the Model Law, save for two additional grounds:

- The subject matter of the difference between the parties to the award is not capable of settlement by arbitration under the law of Singapore; or
- Enforcement of the award would be contrary to the Singapore public policy.

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

Once judgment has been entered in terms of the award, this has the effect of ‘converting’ the award into a judgment of the Singapore courts. The modes of execution of a Singapore court judgment are then made available to the award creditor.

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

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

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

In practice, the courts generally uphold and enforce arbitration awards unless one of the grounds for challenge clearly exists. However, the court would approach with caution an application to enforce a foreign award which has already been set aside by the supervising courts of the arbitration.

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

Typically, enforcement proceedings take about 1 month if unopposed. If the application is opposed, however, proceedings can take about 1 year for final disposal.

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

XIV. Sovereign Immunity

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

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

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

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

The enforcement of an award against the Singapore government is also subject to the Government Proceedings Act and Order 73 of the Rules of Court, which provide the applicable procedure for court proceedings against the Singapore government.

XV. Investment Treaty Arbitration

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

Singapore ratified the Washington Convention in 1968. Under the Arbitration (International Investment Disputes) Act, once registered, a Washington Convention award has the same effect as a judgment of the Singapore High Court and is binding on the Singapore Government.

The SIAC has also released the first edition of Investment Arbitration Rules, a specialised set of rules intended to address the unique issues in the conduct of international investment arbitration.

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

Singapore is party to 40 bilateral investment treaties and has to date entered into 17 regional and bilateral Free Trade Agreements.

XVI. Resources

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

Halsbury's Laws of Singapore, vol 2 (LexisNexis, 1998 and Re-issue 2003)
 Merkin, Robert, *Singapore Arbitration Legislation—Annotated* (Informa, 2009)
 Moser & Choong, Eds., *Asia Arbitration Handbook* (Oxford University Press, 2011)
 Sundaresh Menon, Gen. Ed., *Arbitration in Singapore: A Practical Guide* (Sweet & Maxwell, 2014).
 D Joseph, D Foxton, Gen Eds., *Singapore International Arbitration: Law and Practice* (LexisNexis, 2014).

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

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

XVII. Trends and Developments

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

Arbitration has been increasing in popularity in Singapore and is considered a real alternative to court proceedings in Singapore.

In addition, the government's efforts, together with that of the judiciary and the local bar, have assisted in Singapore's rise in prominence in international arbitration. The rising popularity of Singapore as an arbitration hub is supported by Singapore's position as a hub for regional trade and commerce, the accessibility of Singapore to regional clients and the perception of Singapore as a neutral destination to resolve disputes.

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

Singapore is generally supportive of alternative dispute resolution. For example, the practice directions of the Subordinate Courts of Singapore were amended in 2012 to introduce a "presumption of ADR" for all civil disputes, whereby all civil cases filed in the Subordinate Courts are automatically referred to ADR, unless any of the parties opt out of such process.

In 2013, a Working Group was appointed to propose plans to develop the international commercial mediation space in Singapore; following the recommendations of the Working Group, the Singapore International Mediation Institute and the Singapore International Mediation Centre were launched in 2014. In 2017, the Mediation Act was passed, as part of the initiative to grow Singapore as a destination for international dispute resolution.

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

The Foreign Limitation Periods Act 2012 (FLPA) and the International Arbitration Amendment Act 2012 came into effect in 2012.

In summary, the amendments to the IAA :

- Expressly extend the IAA's application to arbitration agreements concluded by any means (orally, by conduct or otherwise), as long as their content is recorded in any form;

- Permit the Singapore courts to review negative jurisdictional rulings made by arbitral tribunals;
- Expressly permit the arbitral tribunal to award interest, whether simple or compound, on: (a) monies claimed in arbitrations and (b) costs orders;
- Provide legislative affirmation on the recognition and enforceability of orders made by emergency arbitrators (whether appointed under the SIAC Rules or any other institutional rules).

The FLPA, in brief, provides that:

- For any dispute arbitrated in Singapore governed by the substantive law of a foreign jurisdiction, the laws relating to limitation of that foreign jurisdiction shall apply;
- In exercising any discretion conferred pursuant to the foreign limitation law, Singapore courts shall exercise such discretion in a manner comparable by the courts of that foreign country;
- Foreign limitation law, where normally applicable to the relevant proceedings, will not be applied by the Singapore courts where such an application would conflict with public policy (e.g. cause undue hardship to a person who is or may be made party to the proceedings).
- The FLPA shall bind and applies to any action or proceedings by or against the Singapore Government.

More recently, the Civil Law (Amendment) Act 2017 was passed, allowing third-party funding for international arbitrations in Singapore.

In brief, the Civil Law (Amendment) Act 2017 provides that:

- Third-party funding contracts can be valid and enforceable in international arbitration and related legal proceedings in Singapore;
- Such third-party funding contracts must meet the following criteria to be enforceable:
 - The third-party funder must be a “*Qualifying Third-Party Funder*”, i.e., the third-party funder must carry out the principal business of funding claims, whether in Singapore or elsewhere; and have a paid up share capital, or have managed assets, of not less than S\$5 million or the equivalent amount in foreign currency;
 - The funding must be in relation to international arbitration proceedings and/or related court / mediation proceedings. An arbitration is “*international*” if it falls within the scope of section 5(2) of the IAA.

Amendments were also made to the Legal Profession Act to clarify that legal professionals may introduce or refer funders to their clients so long as they do not receive direct financial benefit from the introduction/referral; and may act for their clients in relation to the third-party funding contract. However, practitioners must disclose to the court or tribunal, and to every other party to the proceedings, the existence of any third party funding contract and the identity and address of any funder involved.