Global Arbitration Review

The Guide to Challenging and Enforcing Arbitration Awards

General Editor
J William Rowley QC

Editors
Emmanuel Gaillard and Gordon E Kaiser

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Publisher's Note

Global Arbitration Review is delighted to publish this new volume, *The Guide to Challenging and Enforcing Arbitration Awards*.

For those unfamiliar with Global Arbitration Review, we are the online home for international arbitration specialists, telling them everything they need to know about all the developments that matter. We provide daily news and analysis, and a series of more in-depth books and reviews, and also organise conferences and build work-flow tools. Visit us at www.globalarbitrationreview.com.

As the unofficial journal of international arbitration, sometimes we spot gaps in the literature earlier than other publishers. Recently, as J William Rowley QC observes in his excellent preface, it became obvious that the time spent on post-award matters has increased vastly compared with, say, 10 years ago, and it was high time someone published a reference work focused on this phase.

The Guide to Challenging and Enforcing Arbitration Awards is that book. It is a practical know-how text covering both sides of the coin – challenging and enforcing – first at thematic level, and then country by country. We are delighted to have worked with so many leading firms and individuals to produce it.

If you find it useful, you may also like the other books in the GAR Guides series. They cover energy, construction, M&A and mining disputes in the same unique, practical way. We also have books on advocacy in international arbitration and the assessment of damages.

My thanks to the editors for their vision and energy in pursuing this project and to my colleagues in production for achieving such a polished work.

Contents

Editor's Preface

During the past two decades, the explosive and continuous growth in cross-border trade and investments that began after World War II has jet-propelled the growth of international arbitration. Today, arbitration (whether *ad hoc* or institutional) is the universal first choice over transnational litigation for the resolution of cross-border business disputes.

Why parties choose arbitration for international disputes

During the same period, forests have been destroyed to print the thousands of papers, pamphlets, scholarly treatises and texts that have analysed every aspect of arbitration as a dispute resolution tool. The eight or 10 reasons usually given for why arbitration is the best way to resolve cross-border disputes have remained pretty constant, but their comparative rankings have changed somewhat. At present, two reasons probably outweigh all others.

The first must be the widespread disinclination of those doing business internationally to entrust the resolution of prospective disputes to the national court systems of their foreign counterparties. This unwillingness to trust foreign courts (whether based on knowledge or simply uncertainty as to whether the counterparty's court system is worthy – i.e., efficient, experienced and impartial) leaves international arbitration as the only realistic alternative, assuming the parties have equal bargaining power.

The second is that, unlike court judgments, arbitral awards benefit from a series of international treaties that provide robust and effective means of enforcement. Unquestionably, the most important of these is the 1958 New York Convention, which enables the straightforward enforcement of arbitral awards in approximately 160 countries. When enforcement against a sovereign state is at issue, the ICSID Convention of 1966 requires that ICSID awards are to be treated as final judgments of the courts of the relevant contracting state, of which there are currently 161.

Awards used to be honoured

A decade ago, international corporate counsel who responded to the 2008 Queen Mary/PricewaterhouseCoopers Survey on Corporate Attitudes and Practices in Relation to Investment Arbitration (the 2008 Queen Mary Survey) reported positive outcomes on the use of international arbitration to resolve disputes. A very high percentage (84 per cent) indicated that, in more than 76 per cent of arbitration proceedings, the non-prevailing party voluntarily complied with the arbitral award. Where enforcement was required, 57 per cent said that it took less than a year for awards to be recognised and enforced, 44 per cent received the full value of the award and 84 per cent received more than three-quarters of the award. Of those who experienced problems in enforcement, most described them as complications rather than insurmountable difficulties. The survey results amounted to a stunning endorsement of international arbitration for the resolution of cross-border disputes.

Is the situation changing?

As an arbitrator, my job is done with the delivery of a timely and enforceable award. When the award is issued, my attention invariably turns to other cases, rather than to whether the award produces results. The question of enforcing the award (or challenging it) is for others. This has meant that, until relatively recently, I have not given much thought to whether the recipient of an award would be as sanguine today about its enforceability and payment as those who responded to the 2008 Queen Mary Survey.

My interest in the question of whether international business disputes are still being resolved effectively by the delivery of an award perked up a few years ago. This was a result of the frequency of media reports – pretty well daily - of awards being challenged (either on appeal or by applications to vacate) and of prevailing parties being required to bring enforcement proceedings (often in multiple jurisdictions).

Increasing press reports of awards under attack

During 2018, *Global Arbitration Review*'s daily news reports contained literally hundreds of headlines that suggest that a repeat of the 2008 Queen Mary Survey today could well lead to a significantly different view as to the state of voluntary compliance with awards or the need to seek enforcement.

A sprinkling of last year's headlines on the subject are illustrative:

- 'Well known' arbitrator sees award set aside in London
- Gazprom challenges gas pricing award in Sweden
- ICC award set aside in Paris in Russia–Ukrainian dispute
- Yukos bankruptcy denied recognition in the Netherlands
- Award against Zimbabwe upheld after eight years
- Malaysia to challenge multibillion-dollar 1MBD settlement
- Uzbekistan escapes Swiss enforcement bid
- India wins leave to challenge award on home turf

Regrettably, no source of reliable data is available as yet to test the question of whether challenges to awards are on the increase or the ease of enforcement has changed materially

since 2008. However, given the importance of the subject (without effective enforcement, there really is no effective resolution) and my anecdote-based perception of increasing concerns, last summer I raised the possibility of doing a book on the subject with David Samuels (*Global Arbitration Review*'s publisher). Ultimately, we became convinced that a practical, 'know-how' text that covered both sides of the coin – challenges and enforcement – would be a useful addition to the bookshelves of those who more frequently than in the past may have to deal with challenges to, and enforcement of, international arbitration awards. Being well equipped (and up to date) on how to deal with a client's post-award options is essential for counsel in today's increasingly disputatious environment.

David and I were obviously delighted when Emmanuel Gaillard and Gordon Kaiser agreed to become partners in the project.

Editorial approach

As editors, we have not approached our work with a particular view on whether parties are currently making inappropriate use of mechanisms to challenge or resist the enforcement of awards. Any consideration of that question should be made against an understanding that not every tribunal delivers a flawless award. As Pierre Lalive said in a report 35 years ago:

> *an arbitral award is not always worthy of being respected and enforced; in consequence, appeals against awards [where permitted] or the refusal of enforcement can, in certain cases, be justified both in the general interest and in that of a better quality of arbitration.*

Nevertheless, the 2008 Queen Mary Survey, and the statistics kept by a number of the leading arbitral institutions, suggest that the great majority of awards come to conclusions that should normally be upheld and enforced.

Structure of the guide

This guide is structured to include, in Part I, coverage of general matters that will always need to be considered by parties, wherever situated, when faced with the need to enforce or to challenge an award. In this first edition, the 13 chapters in Part I deal with subjects that include (1) initial strategic considerations in relation to prospective proceedings, (2) how best to achieve an enforceable award, (3) challenges generally, (4) a variety of specific types of challenges, (5) enforcement generally, (6) the enforcement of interim measures, (7) how to prevent asset stripping, (8) grounds to refuse enforcement, and (9) the special case of ICSID awards.

Part II of the book is designed to provide answers to more specific questions that practitioners will need to consider when reaching decisions concerning the use (or avoidance) of a particular national jurisdiction – whether this concerns the choice of that jurisdiction as a seat of an arbitration, as a physical venue for the hearing, as a place for enforcement, or as a place in which to challenge an award. This first edition includes reports on 29 national jurisdictions. The author, or authors, of each chapter have been asked to address the same 35 questions. All relate to essential, practical information on the local approach and requirements relating to challenging or seeking to enforce awards in each jurisdiction. Obviously, the answers to a common set of questions will provide readers

with a straightforward way in which to assess the comparative advantages and disadvantages of competing jurisdictions.

Through this approach, we have tried to produce a coherent and comprehensive coverage of many of the most obvious, recurring or new issues that are now faced by parties who find that they will need to take steps to enforce these awards or, conversely, find themselves with an award that ought not to have been made and should not be enforced.

Quality control and future editions

Having taken on the task, my aim as general editor has been to achieve a substantive quality consistent with *The Guide to Challenging and Enforcing Arbitration Awards* being seen as an essential desktop reference work in our field. To ensure content of high quality, I agreed to go forward only if we could attract as contributors, colleagues who were some of the internationally recognised leaders in the field. Emmanuel, Gordon and I feel blessed to have been able to enlist the support of such an extraordinarily capable list of contributors.

In future editions, we hope to fill in important omissions. In Part I, these could include chapters on successful cross-border asset tracing, the new role played by funders at the enforcement stage, and the special skill sets required by successful enforcement counsel. In Part II, we plan to expand the geographical reach with chapters on China, Saudi Arabia, Turkey and Venezuela.

Without the tireless efforts of the Global Arbitration Review team at Law Business Research, this work never would have been completed within the very tight schedule we allowed ourselves; David Samuels and I are greatly indebted to them. Finally, I am enormously grateful to Doris Hutton Smith (my long-suffering PA), who has managed endless correspondence with our contributors with skill, grace and patience.

I hope that all my friends and colleagues who have helped with this project have saved us from error – but it is I alone who should be charged with the responsibility for such errors as may appear.

Although it should go without saying, this first edition of this publication will obviously benefit from the thoughts and suggestions of our readers on how we might be able to improve the next edition, for which we will be extremely grateful.

J William Rowley QC

April 2019

London

Part II

Challenging and Enforcing Arbitration Awards: Jurisdictional Know-How

38

Singapore

Kohe Hasan and Shourav Lahiri[1]

Applicable requirements as to the form of arbitral awards

Applicable legislation as to the form of awards

1 Must an award take any particular form (e.g., in writing, signed, dated, place, the need for reasons, delivery)?

Under Section 38(1) of the Arbitration Act (Cap. 10) (AA), or Article 31(1) of the UNCITRAL Model Law on International Commercial Arbitration 1985 (the Model Law), which is given the force of law in Singapore under Section 3(1) of the International Arbitration Act (Cap. 143A) (IAA), an arbitration award must be made in writing and be signed by the arbitrator in person (in the case of a sole arbitrator) or at least the majority of the arbitrators (in the case of two or more arbitrators), provided that the reasons for any omitted signatures of any arbitrators is stated.

The award must state the reasons upon which it is based (Section 38(2), AA; Article 31(2), Model Law). The award must also state the date of the award and place of arbitration (Section 38(3), AA; Article 31(3), Model Law). After the award is made, a copy of the signed award must be delivered to each party (Section 38(5), AA; Article 31(4), Model Law). The award is deemed to have been made at the place of arbitration (Section 38(4), AA).

1 Kohe Hasan and Shourav Lahiri are partners at Reed Smith LLP. Kohe Hasan is also a director of Resource Law LLC, the Formal Law Alliance partner of Reed Smith in Singapore.

Applicable procedural law for recourse against an award

Applicable legislation governing recourse against an award

2 Are there provisions governing modification, clarification or correction of an award?

For international arbitrations and domestic arbitrations, the applicable provisions are Article 33 of the Model Law and Section 43 of the AA, respectively. The grounds under the AA are the same as those under the Model Law.

Appeals from an award

3 May an award be appealed to or set aside by the courts? If so, on what grounds and what procedures? What are the differences between appeals and applications for set-aside?

An arbitral award is final and binding under Singapore law pursuant to Section 19B of the IAA and Section 44 of the AA. For domestic arbitrations (i.e., those governed by the AA), a limited ground of appeal is available where a question of law arises out of an award. Arbitral awards can be set aside by Singapore courts under the IAA and the AA.

Appeals (under the AA only)

A party to the arbitral proceedings may appeal (upon notice to the other parties and to the arbitral tribunal) to the Singapore courts on a question of law arising out of an award (Section 49, AA). The right of appeal, however, can be excluded by agreement, while an agreement to dispense with reasons for the tribunal's award is deemed an agreement to exclude the right to appeal (Section 49(2), AA).

An appeal from a decision of the High Court to the Court of Appeal is permitted with leave of the High Court; a decision of the High Court to deny leave to appeal to the Court of Appeal is not subject to appeal (Section 49(7) and (11), AA; *Ng Chin Siau v. How Kim Chuan* [2007] SGCA 46).

As a prerequisite to making an appeal, the applicant must exhaust all available arbitral processes of appeal or review and any available recourse under Section 43 of the AA (Section 50(2), AA).

Unless the appeal is being brought by consent of the parties, there are various conditions with which the court must be satisfied before leave to appeal may be granted (Section 49(5), AA). In addition, the application must be made within 28 days of the award being made (Section 50(3), AA).

Not every decision on a question of law made in an award is appealable. A 'question of law' is a finding of law that the parties dispute and requires the guidance of the court to resolve. However, when an arbitrator incorrectly applies a principle of law, that is an error of law against which the aggrieved party is not entitled to appeal (see *Econ Piling Pte Ltd v. Shanghai Tunnel Engineering Co Ltd* [2011] 1 SLR 246).

On appeal, the court may confirm, vary or remit the award to the tribunal, in whole or in part, for reconsideration in light of the court's determination, or set aside the award in whole or in part (Section 49(8), AA). However, the court will not exercise its power to

set aside the award unless satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration (Section 49(9), AA).

Setting aside

Under the AA

Arbitral awards made under the AA may be set aside. The application to set aside an award must be made by originating summons within three months of the date of receipt of the award by the applicant (Section 48(2), AA). The grounds (Section 48(1), AA) are:

- the incapacity of a party;
- an arbitration agreement that is invalid under the law of the agreement;
- a lack of proper notice of the appointment of arbitrators or commencement of proceedings, or a party's inability to present his or her case;
- a dispute or award falls outside the submission to arbitration;
- the composition of the arbitral tribunal, or conduct of the arbitral proceedings, is contrary to the parties' agreement;
- any fraudulent or otherwise corrupt act has induced or affected the making of the award;
- a breach of natural justice;
- the subject matter of the dispute cannot be resolved through arbitration; and
- the award is contrary to the public policy of Singapore.

Under the IAA

Under the IAA, the only recourse against an award is to set it aside. The grounds to do so are similar to those under the AA (see Section 24, IAA read with Article 34(2), Model Law; see also *Soh Beng Tee & Co Pte Ltd v. Fairmount Development Pte Ltd* [2007] SGCA 28).

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.

The Singapore courts have consistently applied a policy of minimal curial intervention even with regard to domestic cases. In *Tjong Very Sumito v. Antig Investments Pte Ltd* [2009] 4 SLR(R) 732 at [28], the Court of Appeal described the court's approach to arbitration proceedings as an 'unequivocal judicial policy of facilitating and promoting arbitration'. The Court of Appeal in *BLC and others v. BLB and another* [2014] 4 SLR 79 went further in stating that '[i]t is now axiomatic that there will be minimal curial intervention in arbitration proceedings'. Thus, it is clear that the courts will adopt a generous approach and will not examine an award assiduously, looking for blame or fault in the arbitral process (for awards under the IAA, see Article 34(3), Model Law and Order 69A, rule 2(4), Rules Of Court (2014 Rev. Ed.) (ROC); for awards under the AA, see Section 48(2), AA and Order 69, rule 2(1), ROC).

Applicable procedural law for recognition and enforcement of arbitral awards

Applicable legislation for recognition and enforcement

4 What is the applicable procedural law for recognition and enforcement of an arbitral award in your jurisdiction? Is your jurisdiction party to treaties facilitating recognition and enforcement of arbitral awards?

Singapore is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Arbitration Awards (the New York Convention) and enforces awards from other states on the basis of reciprocity.

Both the IAA and the AA govern the recognition and enforcement of arbitral awards in Singapore. The IAA applies to arbitral awards made in international arbitrations seated in Singapore (Section 19, IAA) and to arbitral awards made in pursuance of an arbitration agreement in the territory of a New York Convention state other than Singapore (Section 29, IAA).

Section 5 of the IAA sets out the elements in determining whether an arbitration seated in Singapore is to be treated as an international arbitration. The AA applies to the recognition and enforcement of arbitral awards made in domestic arbitration proceedings to which the AA applies (Section 46(1), AA), and to arbitral awards that are made in a non-New York Convention state (Section 46(3), AA).

Sections 19 and 29 of the IAA and Section 46(1) of the AA provide that an award made by the arbitral tribunal pursuant to an arbitration agreement may, with leave of the court, be enforced in the same manner as a judgment or order to the same effect of the High Court in Singapore. Where leave is so given, judgment may be entered in terms of the award.

Matters of Singapore procedure relating to the recognition and enforcement of an arbitral award are governed by the Singapore ROC, in particular, Orders 69 and 69A.

The New York Convention

5 Is the state a party to the 1958 New York Convention? If yes, what is the date of entry into force of the Convention? Was there any reservation made under Article I(3) of the Convention?

Yes, Singapore is a signatory to the New York Convention, which was enacted into Singaporean law on 19 November 1986. A reciprocity reservation made under Article I(3) of the New York Convention is in effect.

Recognition proceedings

Competent court

6 Which court has jurisdiction over an application for recognition and enforcement of arbitral awards?

An application for leave to enforce an arbitral award is made to the High Court in Singapore.

Jurisdictional issues

7 What are the requirements for the court to have jurisdiction over an application for recognition and enforcement of arbitral awards? Must the applicant identify assets within the jurisdiction of the court that will be the subject of enforcement for the purpose of recognition proceedings?

The Singapore High Court is bound to recognise and enforce arbitral awards falling under the IAA unless one of the grounds for refusing recognition and enforcement is established (Article V, New York Convention; Section 31, IAA).

Singapore courts may assume jurisdiction over an award debtor where one or more of the conditions under Section 16(1) of the Supreme Court of Judicature Act (Cap. 322) are met. Before Singapore courts may assume jurisdiction over the debtor of a foreign arbitral award, an application for leave to enforce must be made by the award creditor by way of an originating summons supported by an affidavit (Order 5, rule 3, ROC).

For the purpose of the recognition proceedings, there is no express requirement that the applicant must first identify assets within the jurisdiction of the courts that will be the subject of enforcement.

Form of the recognition proceedings

8 Are the recognition proceedings in your jurisdiction adversarial or *ex parte*?

The ROC permits the application for leave to enforce an award under Section 19 of the IAA and Section 46(1) of the AA to be made *ex parte* (see Order 69A, rule 6, ROC for enforcement under the IAA, and Order 69, rule 14, ROC for enforcement under the AA).

If the court grants leave to enforce the award *ex parte*, the defendant will be served with the order and will have a period of 14 days after service of the order to apply to set aside the order. If the order is served out of jurisdiction, the court may fix a longer period, during which the debtor may apply to set aside the order (see Order 69, rules 14(2), 14(3) and 14(4), ROC for enforcement under the AA, and Order 69A, rules 6(2), 6(3) and 6(4) for enforcement under the IAA).

The court adopts a 'mechanistic' approach to determining whether there has been a valid and binding arbitration agreement and award, which means it does not seek to look beneath the agreement or award (*Aloe Vera of America, Inc v. Asianic Food (S) Pte Ltd* [2006] 3 SLR(R) 174 at [42] – a case under the IAA, and *AUF v. AUG and other matters* [2016] 1 SLR 859 at [163] – a case under the AA).

Form of application and required documentation

9 What documentation is required to obtain the recognition of an arbitral award?

An application for leave to enforce an award is required to be made by way of originating summons (or by summons if there is already an action pending). An application to enforce an award under the IAA must be supported by an affidavit exhibiting the duly authenticated original award and the original arbitration agreement under which the award was made. If an original cannot be produced for either, a duly certified copy must be produced instead.

An application to enforce an award under the AA must be supported by an affidavit exhibiting the arbitration agreement, a record of the content of the arbitration agreement and the original award, or, in either case, a copy thereof (Order 69, rule 14(1)(a), ROC).

Translation of required documentation

10 If the required documentation is drafted in a language other than the official language of your jurisdiction, is it necessary to submit a translation with an application to obtain recognition of an arbitral award? If yes, in what form must the translation be?

For applications under the IAA, if the arbitration agreement, award or records are in a language other than English, a translation into English is required, duly certified in English as a correct translation by a sworn translator, an official or a diplomatic or consular agent of the country in which the award was made (see Order 69A, rule 6, ROC).

A translation must also be filed for an application under the AA if the award or agreement is in a language other than English. The translation must be certified by a court interpreter or verified by the affidavit of a person qualified to translate the application (Order 92, rule 1, ROC).

Other practical requirements

11 What are the other practical requirements relating to recognition and enforcement of arbitral awards?

A party seeking leave to enforce an award will need to pay court fees of S$3,300 upon filing of the originating summons (see Order 110, rule 47, ROC). For the actual filing of the originating summons, the applicable filing fee is S$500 (for matters with a value of up to S$1 million) or S$1,000 (for matters with a value of more than S$1 million) (see Appendix B (Court Fees) of the ROC).

On filing the supporting affidavit, for every page or part thereof (including any exhibit annexed thereto or produced therewith), the filing fees are S$2 per page, subject to a minimum fee of S$50 per affidavit (see Appendix B (Court Fees) of the ROC). Additional court fees are payable when applying for execution against the award debtor's assets.

The estimated costs recoverable for an uncontested hearing of an *ex parte* application for leave to enforce an award are between S$500 and S$1,000 (excluding disbursements). The estimated costs recoverable for a contested hearing of a setting aside of the order granting leave to enforce an award are between S$4,000 and S$15,000 (excluding disbursements), depending on the complexity and length of the application (see Appendix G of the Supreme Court Practice Directions).

A party seeking leave to enforce an award on an *ex parte* basis is subject to a duty of full and frank disclosure.

Recognition of interim or partial awards

12 Do courts recognise and enforce partial or interim awards?

Yes. The arbitral tribunal may make more than one award either at different points in time, or on different aspects of the matter (Section 19A(1), IAA; Section 33(1), AA). This may be for the whole award, or for part of the claim or of any counterclaim or cross-claim (Section 19A(2), IAA; Section 33(2), AA). If multiple awards are made, the tribunal must specify the subject matter of each award on its face (Section 19A(3), IAA; Section 33(3), AA).

Under Section 19 of the IAA and Section 46 of the AA, only awards can be enforced. An 'award' is further defined under the IAA and AA as 'a decision of the arbitral tribunal on the substance of the dispute and includes any interim, interlocutory or partial award' (Section 2(1), IAA; Section 2(1), AA).

Both partial and interim awards are considered awards for the purposes of the IAA or AA, and can be recognised and enforced (*PT Perusahaan Gas Negara (Persero) TBK v. CRW Joint Operation* [2015] 4 SLR 364 at [46]-[58]).

A 'partial award' is defined as one that finally disposes of part, but not all, of the parties' claims in arbitration, leaving some claims for further consideration and resolution in future proceedings under the arbitration. By contrast, an 'interim award' is one that does not dispose finally of a particular claim but instead decides a preliminary issue relevant to the disposing of such claim.

Interim measures issued by an arbitral tribunal, such as measures covering security for costs or specific disclosure, are not awards for the purposes of the AA and the IAA. However, under Section 28(4) of the AA and Section 12(6) of the IAA, all orders or directions made or given by the tribunal are, with leave of court, enforceable in the same manner as if they were orders made by the court and, where leave is given, judgment may be entered in terms of the order or direction.

Grounds for refusing recognition of an award

13 What are the grounds on which an award may be refused recognition? Are the grounds applied by the courts different from the ones provided under Article V of the Convention?

The enforcement of an award is preceded by its recognition and, under Singapore law, no specific distinction is made between the grounds for recognition of an award and its enforcement. Under Section 31 of the IAA, the following are the grounds to resist enforcement of an award:

- there is evidence of the incapacity of a party to the arbitration agreement, under the law applicable to the party, when the agreement was made;
- the arbitration agreement is invalid under the law to which the parties are subject, or in the absence of any indication in that respect, under the law of the country where the award was made;
- a party was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his or her case in the arbitration proceedings;

- 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 (save that where such an award contains decisions on matters not submitted to arbitration but those decisions can be separated from decisions on matters submitted to arbitration, the award may be enforced to the extent that it contains decisions on matters so submitted);
- the composition of the tribunal or conduct of the arbitral proceedings was not in accordance with the parties' agreement or the law of the country where the arbitration took place;
- the award is not yet binding on the parties, or has been set aside or suspended by a competent authority of the country in which the award was made, under the law of that country;
- the subject matter of the dispute between the parties to the award cannot be settled by arbitration under the law of Singapore; or
- the enforcement of the award would be contrary to the public policy of Singapore.

Effect of a decision recognising an award

14 What is the effect of a decision recognising an award in your jurisdiction? Is it immediately enforceable? What challenges are available against a decision recognising an arbitral award in your jurisdiction?

Once an award has been recognised, a party seeking to enforce the award has to seek leave from the Singapore court and the order obtained must be served on the award debtor (Order 69, rule 14(1), ROC). The debtor has 14 days after the service of the order granting leave or, if the order is to be served out of jurisdiction, within such period as the court granting leave may stipulate, to apply to set aside the order.

The grounds a debtor may rely on to set aside an order are as stipulated in question 13.

The award must not be enforced during that period or, if the debtor applies within that period to set aside the order, until after the debtor's application is finally disposed of (Order 69, rule 14(4), ROC and Order 69A, rule 6(4), ROC). Subsequently, a judgment may be entered in terms of the award and the award can be enforced in the same manner as any judgment of the Singapore courts.

Decisions refusing to recognise an award

15 What challenges are available against a decision refusing to recognise an arbitral award in your jurisdiction?

There is an automatic right of appeal to the Court of Appeal against a decision of the High Court refusing leave to enforce an award (Order 57, rule 4, ROC).

Stay of recognition or enforcement proceedings pending annulment proceedings

16 Will the courts adjourn the recognition or enforcement proceedings pending the outcome of annulment proceedings at the seat of the arbitration? What trends, if any, are suggested by recent decisions? What are the factors considered by courts to adjourn recognition or enforcement?

Section 31(5) of the IAA provides the Singapore courts with the option to adjourn an application to enforce a foreign award, if an application to set aside or suspend an arbitration award is pending in the courts of the seat of the arbitration.

Where the Singapore court elects to do so, it may (1) if the court considers it proper to do so, adjourn the proceedings or, as the case may be, that part of the proceedings that relates to the award, and (2) on the application of the party seeking to enforce the award, order the other party to give suitable security (Section 31(5), IAA).

In *Man Diesel & Turbo SE v. IM Skaugen Marine Services Pte Ltd* [2018] SGHC 132, the Singapore High Court refused to adjourn an enforcement application on the grounds that an application to set aside the award was pending in the Danish courts, noting that Section 31(5) of the IAA gave a wide discretion to the Court. In exercising its discretion to refuse the adjournment, the Court took into account the merits of the set-aside application, the impact on the award creditor of the delay in obtaining the fruits of the award and the chances of disippation of assets by the judgment creditor during the period of adjournment.

Security

17 If the courts adjourn the recognition or enforcement proceedings pending the annulment proceedings, will the defendant to the recognition or enforcement proceedings be ordered to post security? What are the factors considered by courts to order security? Based on recent case law, what are the form and amount of the security to be posted by the party resisting enforcement?

If a court adjourns recognition or enforcement proceedings pending annulment proceedings at the seat of the arbitration, the court may (but is not obliged to), on the application of the party seeking to enforce the award, order the other party to give suitable security (Section 31(5)(b), IAA).

This provision has not been examined by the Singapore courts. However, given that the statute does not expressly dictate the factors that Singapore courts may take into account when dealing with the issue of security in the above circumstances, the Singapore courts are likely to take the view that they have broad discretion to take into account any relevant factor. The Singapore courts would also refer to decisions from other jurisdictions for guidance on the issue.

Recognition or enforcement of an award set aside at the seat

18 Is it possible to obtain the recognition and enforcement of an award that has been fully or partly set aside at the seat of the arbitration? If an award is set aside after the decision recognising the award has been issued, what challenges are available against this decision?

Where an award has been set aside at the seat of the arbitration, it is likely that the Singapore courts would refuse enforcement of that award as Section 31(2)(f) of the IAA (which is modelled after Article V(1)(e) of the New York Convention) provides that:

> *(2) 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 . . .*
> *(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.*

Further, the Singapore courts in *PT First Media TBK (formerly known as PT Broadband Multimedia TBK) v. Astro Nusantara International BV and others and another appeal* [2014] 1 SLR 372 at [76], in *obiter* comments, expressed 'serious doubt' as to whether it would retain a discretion to enforce an award that has been set aside at the seat of the arbitration.

The Singapore courts have not yet had occasion to consider how an award duly recognised and cleared for enforcement is to be treated should it subsequently be set aside in a court at the seat of the arbitration. It is anticipated that such instances would be rare as the law of most countries sets out strict time limits for the institution of applications to set aside an award, and Section 31(5) of the IAA allows a party to apply for enforcement proceedings to be adjourned pending disposal of the application to set aside. Having said that, as seen in the *Man Diesel* case (see question 16), this could become a live issue depending on the outcome of the set-aside proceedings in the Danish courts. Also, in *BAZ v. BBA and others* [2018] SGHC 275, the Singapore High Court had to consider a set-aside application (which it refused) after the enforcement proceedings, since the Singapore-seated award had been completed in India (the Indian court having refused a challenge to enforcement).

Service

Service in your jurisdiction

19 What is the applicable procedure for service of extrajudicial and judicial documents to a defendant in your jurisdiction?

In the context of the service of *ex parte* orders granting leave to enforce an award, the applicable rules for service within the jurisdiction are set out in Order 69A, rules 6(2) and 6(4) of the ROC (for proceedings under the IAA) and Order 69, rules 14(2) and 14(4) of the ROC (for proceedings under the AA).

Once a court order for leave to enforce an award is obtained, the creditor must draw up the order and serve it on the debtor by delivering a copy of the order to them personally, or by sending a copy to their usual or last known place of residence or business, or in such other manner as the court may direct.

Within 14 days of service of the order or, if the order is to be served out of the jurisdiction, within such other period as the court may fix, the debtor may apply to set aside the order and the award shall not be enforced until after expiry of that period or, if the debtor applies within that period to set aside the order, until after the application is finally disposed of.

The copy of the order granting leave to enforce must state the effect of the foregoing paragraph.

Service out of your jurisdiction

20 What is the applicable procedure for service of extrajudicial and judicial documents to a defendant out of your jurisdiction?

In the context of the service of *ex parte* orders granting leave to enforce an award, the applicable rules for service out of the jurisdiction are set out in Order 69A, rule 6(3) of the ROC (for proceedings under the IAA) and Order 69, rule 14(3) of the ROC (for proceedings under the AA).

Service out of the jurisdiction of such orders is permissible without leave of court. The order need not be served personally on the award debtor so long as it is served in accordance with the law of the country in which service is effected (see Order 11, rule 3(3) of the ROC).

The copy of the order granting leave to enforce that is served on the debtor must contain a statement of the debtor's right to apply to set aside the order within such period as the court may dictate, and a statement that the award will not be enforced until that period has expired or an application made by the debtor within the time limit has been finally disposed of (see Order 69, rule 14(5) of the ROC for the AA and Order 69A, rule 6(5) for the IAA).

Identification of assets

Asset databases

21 Are there any databases or publicly available registers allowing the identification of an award debtor's assets within your jurisdiction?

Certain databases are publicly available and can be used to identify assets. For example, land records with information about property assets are kept by the Singapore Land Authority, which is open to public searches.

The Accounting and Corporate Regulatory Authority (ACRA) also allows searches in the ACRA register to ascertain the particulars of business entities that currently exist and are operating (including a business entity's registered address) and those of their shareholders, directors or partners. Depending on the status of a business entity and filings made with ACRA, it may also be possible to obtain recent financial statements.

Searches can also be conducted through ACRA for the profiles of individuals to ascertain any registered addresses and business dealings in Singapore.

Asset investigation services are also provided by a number of companies.

Information available through judicial proceedings

22 Are there any proceedings allowing for the disclosure of information about an award debtor within your jurisdiction?

Once an *ex parte* order for enforcement has been obtained and served on an award debtor, and the award debtor has not applied to set aside the award within the permitted time limit, Order 48, rule 1(1) of the ROC provides that the award creditor may make an *ex parte* application for an order requiring that the award debtor attend court to provide information that may assist in the enforcement of the award. If the award debtor is a company, an officer of the company shall be called upon.

Enforcement proceedings

Availability of interim measures

23 Are interim measures against assets available in your jurisdiction? May award creditors apply such interim measures against assets owned by a sovereign state?

Interim measures against assets are available in Singapore in support of the enforcement of arbitration awards. Thus, freezing *Mareva* injunctions have been granted in support of the enforcement of local and foreign awards.

In *Strandore Invest A/S v. Soh Kim Wat* [2010] SGHC 151, the Singapore High Court exercised its power to grant a worldwide *Mareva* injunction in aid of enforcement of a foreign arbitration award. Further, in *AYK v. AYM* [2015] SGHC 329, the Singapore High Court made an injunction order preventing the award debtor from dissipating its assets on the basis that there was a real risk that it might do so, or that it might move the assets around to frustrate attempts to satisfy the final award.

For awards under the AA, Section 31 of the AA sets out the Singapore High Court's powers in support of arbitral proceedings. Section 31(1)(d) of the AA specifically grants the Court the power to order an interim injunction or any other interim measure.

For assets owned by a sovereign state, Singapore law does not allow for injunctive relief against a foreign state (Section 15(2) of the State Immunity Act (Cap 313) (SIA)) unless the state consents under Section 15(3) of the SIA.

Procedure for interim measures

24 What is the procedure to apply interim measures against assets in your jurisdiction? Is it a requirement to obtain prior court authorisation before applying interim measures? If yes, are such proceedings *ex parte*?

To apply for interim measures against assets in Singapore, pursuant to Order 29, rule 1 of the ROC, an application has to be made by way of a summons supported by an affidavit that sets out the grounds of the application. This must be served at least two clear days before the hearing (see Order 32, rule 3 of the ROC).

If a case is urgent, parties can make an *ex parte* application. Note, however, that there is an obligation to make full and frank disclosure of all material facts (*The Vasiliy Golovnin*

[2008] 4 SLR 994). The respondent to an *ex parte* obligation should be notified of the application and invited to attend the application, although the respondent cannot challenge the application, unlike in an *inter partes* hearing (Paragraph 41(1) of the Supreme Court Practice Directions).

Interim measures against immovable property

25 What is the procedure for interim measures against immovable property within your jurisdiction?

See questions 23 and 24.

Interim measures against movable property

26 What is the procedure for interim measures against movable property within your jurisdiction?

See questions 23 and 24.

Interim measures against intangible property

27 What is the procedure for interim measures against intangible property within your jurisdiction?

See questions 23 and 24.

Attachment proceedings

28 What is the procedure to attach assets in your jurisdiction? Is it a requirement to obtain prior court authorisation before attaching assets? If yes, are such proceedings *ex parte*?

The procedure to attach assets in Singapore is to apply to the court for such orders.

One of the main methods by which assets may be attached is through garnishee orders. Pursuant to Order 49, rule 1 of the ROC, the court may, subject to the provisions of this Order and of any written law, order the garnishee to pay the judgment creditor the amount of any debt due or accruing that is due to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.

Order 49, rule 2 of the ROC states that an application for a garnishee order must be made *ex parte*, supported by an affidavit or affirmation: (1) identifying the judgment or order to be enforced and stating the amount under it that is still unpaid at the time of the application; and (2) stating that, to the best of the information or belief of the deponent, the garnishee (who must be named) is within the jurisdiction and is indebted to the judgment debtor, and providing the sources of the deponent's information or the grounds for this belief.

There are other orders whereby an award is for the payment of a sum of money. Measures for levying execution are listed in Order 45 of the ROC and include writs of

seizure and the sale of movable and immovable property (Orders 46 and 47, ROC), stop orders (Order 50, ROC) and the appointment of receivers (Order 51, ROC).

Attachment against immovable property

29 What is the procedure for enforcement measures against immovable property within your jurisdiction?

After an award is made and the award creditor wishes to satisfy the award debt, leave of court is required for an order for the writ of seizure and sale of immovable property.

Under Order 47 of the ROC, an application is required to be made by *ex parte* summons under Form 83, supported by an affidavit. The award creditor files the writ of seizure and sale in Form 83 and an undertaking, declaration and indemnity in Form 87, and then serves a copy of the writ of seizure and sale, with the order and notice of seizure in Form 97, on the award debtor (Order 47, rule 4(1)(e), ROC). Upon receipt of the writ of seizure and sale, the award debtor must register it with the Singapore Land Authority and must give the notice of seizure in Form 97 to the judgment debtor (Order 47, rule 4(1)(e)(iii), ROC).

If the order is for the giving of possession of immovable property, the procedure is to issue a writ of possession. Based on Order 45, rule 3 of the ROC, a judgment or order giving possession of immovable property may be enforced by a writ of possession or an order of committal. An application for leave to issue a writ of possession is made *ex parte* with a supporting affidavit.

Attachment against movable property

30 What is the procedure for enforcement measures against movable property within your jurisdiction?

After an award is made and the award creditor wants to satisfy the award debt, leave of court is required for an order for a writ of seizure and sale of movable property. The writ of seizure and sale can be filed under Order 46, rule 1 of the ROC. Leave is generally not required unless the writ falls is enumerated in Order 46, rule 2 of the ROC.

Once the writ of seizure and sale is filed, the actual seizure and sale of the property seized is carried out by the office of the sheriff. Notice of seizure under Form 90 is given to the award debtor. Execution is usually carried out between 9am and 5pm.

Attachment against intangible property

31 What is the procedure for enforcement measures against intangible property within your jurisdiction?

The process is similar to that set out in question 30, although there are certain additional documents that need to be filed.

Enforcement against foreign states

Applicable law

32 Are there any rules in your jurisdiction that specifically govern recognition and enforcement of arbitral awards against foreign states?

The SIA governs the immunity of states. If a state has agreed in writing to submit a dispute that is subject, or may become subject, to arbitration, the state is not immune to proceedings in the Singapore courts that relate to arbitration (Section 11(1), SIA) and this is likely to apply to court proceedings relating to the recognition and enforcement of arbitral awards against foreign states.

Service of documents to a foreign state

33 What is the applicable procedure for service of extrajudicial and judicial documents to a foreign state?

Section 14(1) of the SIA requires a writ or other document served when instituting proceedings against a state to be transmitted through the Ministry of Foreign Affairs of Singapore, to the equivalent ministry in that state. Service is deemed to have been effected when the writ or document is received at the ministry. Section 14(2) of the SIA provides that the time for entering an appearance shall begin to run two months after the date on which the writ or document is received. However, these provisions do not apply if the state has agreed to the service of a writ or other document in another manner (Section 14(6), SIA).

Further procedures for service of extrajudicial and judicial documents to a foreign state are governed by Order 11, rule 7 of the ROC.

Immunity from enforcement

34 Are assets belonging to a foreign state immune from enforcement in your jurisdiction? If yes, are there exceptions to such immunity?

Pursuant to Section 15(2) of the SIA, relief may not be given against a state by way of injunction or order for specific performance or for the recovery of land or other property, and the property of a state is not subject to any process involving the enforcement of a judgment or arbitral award or, in an action *in rem* for its arrest, detention or sale. There are two exceptions to this rule. The first is when, on the basis of Section 15(3) of the SIA, the state expressly agrees in writing to waive its immunity from execution or injunctive relief. The second exception is set out in Section 15(4) of the SIA, under which enforcement proceedings (but not injunctive relief) are permitted in respect of property belonging to the state where the relevant property is in use, or is intended for use, for commercial purpose.

Waiver of immunity from enforcement

35 Is it possible for a foreign state to waive immunity from enforcement in your jurisdiction? If yes, what are the requirements of such waiver?

Pursuant to Section 15(3) of the SIA, courts are not prevented from giving relief or commencing procedures with the written consent of the state concerned, and any such consent (which may be contained in a prior agreement) may be expressed so as to have limited or general application; however, a provision merely submitting to the jurisdiction of the courts is not to be regarded as consent for the purposes of this subsection.

Appendix 1

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Kohe Hasan is a Reed Smith partner and a director of Resource Law LLC, Reed Smith's partner in Singapore. She is experienced in all forms of litigation and arbitration, particularly in power, international trade, commodities, infrastructure and transportation disputes. She has represented international oil companies, Fortune 500 companies, ultra-high-net-worth individuals and government-linked organisations in a multitude of large-scale, complex arbitrations. Uniquely, Kohe is equally adept in non-contentious matters and has represented clients in the acquisition of significant mining and power assets in the region. Her contentious experience has been extremely helpful in assisting clients with troubleshooting and mitigating risks at the outset of any transaction.

Fluent in Malay and Bahasa Indonesia, Kohe has built a thriving energy practice in Southeast Asia. She is recognised as one of Singapore's 40 outstanding lawyers under 40 and has been consistently ranked in Band 1 for her work in Cambodia. She writes extensively on developments in arbitration, power and offshore, and her commentaries have been featured in the press and industry publications, including *Singapore Business Times*, *The Phnom Penh Post* and *Sri Lankan Daily News*.

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Shourav founded and led his own law firm in Singapore and Hong Kong for several years before joining Reed Smith in 2018, and prior to that, he spent 10 years as a partner at a leading international law firm. He is a barrister and door-tenant with Francis Taylor Buildings, Chambers of Andrew Tait QC, in London. Routinely rated as a leading individual in *Chambers and Partners*, *Chambers Asia-Pacific* 2018 described him as having a 'good grasp of the law, particularly international arbitration law, . . . articulate and also creative in his approach to the legal dispute . . . attributed to his vast knowledge and experience in handling complex construction disputes'.

Shourav is qualified to practise in Singapore, Hong Kong and in England and Wales. He is a Fellow of the Singapore Institute of Arbitrators and teaches arbitration on the International Entry Course of the SIArb and on the LLM programme at Hong Kong University.

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Enforcement used to be an irrelevance in international arbitration. Most losing parties simply paid. Not so any more. The time spent on post-award matters has increased vastly.

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