

GAR CHALLENGING AND ENFORCING ARBITRATION AWARDS 2020

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# Singapore

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APRIL 2020



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## Applicable requirements as to form of arbitral awards

### 1 Must an award take any particular form (eg, 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).

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## Applicable procedural law for 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.

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## Applicable procedural law for recognition and enforcement of arbitral awards

### 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 (ie, 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.

In what must be a rare occurrence anywhere in the world, the Singapore High Court set aside an award issued under the SCMA Rules on the basis that a party's right to natural justice had been breached by the arbitrator refusing the party permission to call any of the seven witnesses it had wanted to call, preferring instead an oral hearing for submissions only (CBP v CBS [2020] SGHC 23). The court ruled that the power to 'gate' witnesses available under several rules of arbitration and guidance (such as the IBA Rules) was not available to the arbitrator under the SCMA Rules.

#### *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. Neither does the court have the power to extend the three-month time limit within which an application to set aside must be brought (*BXS v BXT* [2019] SGHC(I) 10).

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).

## 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.

## 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.

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## Recognition proceedings

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

On 5 November 2019, the Singapore parliament passed the Republic of Singapore (Amendment) Bill, the Judges' Remuneration (Amendment) Bill and the Supreme Court of Judicature (Amendment) Bill. As a result, the High Court will now comprise of the General Division of the High Court and a new Appellate Division. There is no restructuring of the Court of Appeal which remains the apex court.

An application for leave to enforce an arbitral award is made to the General Division of the High Court in Singapore. Appeals from a decision of the General Division of the High Court on arbitration matters will lie to the Court of Appeal.

### 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.

### 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).

### 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).

## **10 If the required documentation is drafted in another language than the official language of your jurisdiction, is it necessary to submit a translation together 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).

## **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.

## **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.

### 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.

### 14 What is the effect of a decision recognising the 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.

### 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).

### 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 (i) 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 (ii) 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 dissipation of assets by the judgment creditor during the period of adjournment.

**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.

**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? In case the 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).

In a recent decision in *ST Group v Sanum Investments* [2019] SGCA 65, the Singapore Court of Appeal refused enforcement of an award where the Tribunal had determined an incorrect seat. The Court also held that it was not necessary for a party to demonstrate that it had suffered prejudice as a result of the incorrect choice of seat; it would be sufficient for the party to show that had the arbitration been correctly seated, a different court would have supervisory jurisdiction.

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## Service

**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.

## 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).

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## Identification of assets

### 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.

### 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.

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## Enforcement proceedings

### 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. Section 31 of the AA and section 12A of the IAA empowers the High Court to order interim measures in aid of arbitral proceedings. Such power is



exercised scrupulously, and only if it will assist in the just and proper conduct of arbitration, or in the preservation of property which is the subject matter of the arbitration.

The High Court may make orders or give directions for, inter alia, the preservation of any property that forms the subject-matter of the dispute; the prevention of dissipation of assets; and any interim injunction or any other interim measure. This includes the grant of interim anti-suit injunctions, Anton Piller orders, Mareva injunctions, as well as interim mandatory injunctions (though only granted in exceptional circumstances) (see *NCC International AB v Alliance Concrete Singapore Pte Ltd* [2008] 2 SLR(R) 565 at [75]), but is not limited as such (see *Maldives Airports Co Ltd v GMR Malé International Airport Pte Ltd* [2013] 2 SLR 449 at [34]).

For instance, 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.

However, 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.

#### **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 Vasily 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).

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

See questions 23 and 24.

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

See questions 23 and 24.

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

See questions 23 and 24.

#### **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: (i) 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 (ii) 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).

### 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.

### 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.

### 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.

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## Enforcement against foreign states

### 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.

### 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.

### 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.

**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.



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Kohe is a Reed Smith partner and a director at 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 domestic 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 troubleshoot and mitigate risks at the outset of any transaction.

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Shourav is a partner in the firm's Energy and Natural Resources Group. He is a specialist arbitration lawyer with over 20 years of experience advising on oil and gas and infrastructure disputes. He represents clients in the onshore and offshore oil and gas, petrochemicals, power, infrastructure, and building sectors on the procurement, design, engineering, and construction of major projects. 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. Shourav has practised law in Hong Kong, Singapore, London, Dubai, and Beijing. Shourav has appeared as counsel in court hearings, arbitrations, and mediations in Asia-Pacific, the Gulf States, and Europe. He is qualified to practise as an advocate in the Supreme Court of Singapore, as a solicitor in Hong Kong, and as a barrister in England and Wales. Shourav is a Fellow of the Singapore Institute of Arbitrators and teaches arbitration on the LLM programme at Hong Kong University.



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