

GAR KNOW HOW CHALLENGING AND ENFORCING ARBITRATION AWARDS

Singapore

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Applicable requirements as to the form of arbitral awards

1 Must an award take any particular form?

Under the Arbitration Act (Cap. 10) (AA), section 38(1), or the UNCITRAL Model Law on International Commercial Arbitration 1985 (the Model Law), article 31(1), which is given the force of law in Singapore under the International Arbitration Act (Cap. 143A) (IAA) Section 3(1), 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 is stated.

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

Applicable procedural law for recourse against an award (other than applications for setting aside)

2 Are there provisions governing modification, clarification or correction of an award? Are there provisions governing retraction or revision of an award? Under what circumstances may an award be retracted or revised (for fraud or other reasons)? What are the time limits?

For international and domestic arbitrations, the applicable provisions are in Model Law, article 33 and AA, section 43, respectively though the grounds are the same in both.

A party may request that the tribunal corrects clerical or typographical errors in the award, or that it provides an interpretation of a specific point or part of an award. The request must be made within 30 days of receipt of the award unless agreed otherwise. The tribunal will make the correction or clarification, if it considers it to be justified, within 30 days of receipt of the request.

A party may also request an additional award as to claims presented in the arbitration but omitted from the award, within 30 days of receipt of the award. The tribunal will make the additional award, if it considers it to be justified, within 60 days of receipt of the request.

The court may set aside an arbitral award on a number of grounds, including the arbitral award having been induced or affected by fraud or corruption (Model Law, article 34(2); IAA, section 24; AA, section 48(1)).

A setting aside application must be made within three months of the later of (i) the date that the applicant received the arbitral award or (ii) the date that the requests, if any, to correct, interpret or issue an additional award is disposed of by the tribunal (Rules of Court, O69A R2(4)). It should be kept in mind that where an arbitration is conducted in accordance with the rules of a particular arbitral institution, those rules may provide for these issues specifically.

3 May an award be appealed to or set aside by the courts? What are the differences between appeals and applications to set aside awards?

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

Setting aside is distinct from appeal insofar as (i) ‘setting aside’ refers to the annulment of an arbitration award for specific jurisdictional, procedural or public policy issues, whereas (ii) ‘appeal’ refers to challenges on the basis of errors of fact and law contained in an award (ie, a review of substantive matters by a court of appeal).

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 (AA, section 49). The right of appeal, however, can be excluded by agreement. An agreement to dispense with reasons for the tribunal’s award is deemed an agreement to exclude the right to appeal (AA, section 49(2)).

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 (AA, section 49, paragraphs (7) and (11); *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 AA, section 43 (AA, section 50(2)).

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 (AA, section 49(5); see also a summary at *Ng Tze Chew Diana v Aikco Construction Pte Ltd* [2019] SGHC 259 at [59]). In addition, the application must be made within 28 days of the award being made (AA, section 50(3)).

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 (AA, section 49(8)). 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 (AA, section 49(9)).

Setting aside

Under the AA

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

- 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

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

In what must be a rare occurrence anywhere in the world, the Singapore High Court set aside an award issued under the Arbitration Rules of the Singapore Chamber of Maritime Arbitration (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 International Bar Association Rules) was not available to the arbitrator under the SCMA Rules. The decision was subsequently upheld by the Singapore Court of Appeal in CBP v CBS [2021] SGCA 4.

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). This time limit is strict even in the case of fraud discovered at a later date (Bloomerry Resorts and Hotels Inc and another v Global Gaming Philippines LLC and another [2020] SGHC 1).

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 Model Law, article 34(3) and Rules of Court (2014 rev. ed) (ROC) Order 69A, Rule 2(4); for awards under the AA, see AA, section 48(2) and ROC, Order 69, Rule 2(1)).

Applicable procedural law for setting aside of arbitral awards

4 Is there a time limit for applying for the setting aside of an arbitral award?

An application for setting aside an award may not be made once three months have elapsed after the date on which the party making the application received the award, or when a request for correction, interpretation or additional award has been made, after the date on which that request had been disposed of by the tribunal (AA, section 48(2) and Model Law, article 34(3)).

5 What kind of arbitral decision can be set aside in your jurisdiction? Can courts set aside partial or interim awards?

A party may only apply to set aside an award as defined in AA, section 2(1) and the IAA. This includes interim, interlocutory or partial awards. The definitions specifically exclude orders and directions made in accordance with the powers of the arbitral tribunal.

6 Which court has jurisdiction over an application for the setting aside of an arbitral award? Is there a specific court or chamber in place with specific sets of rules applicable to international arbitral awards?

The General Division of the High Court has jurisdiction over an application for the setting aside of an arbitral award (IAA, section 24; AA, section 48(1) read with section 2(1)).

7 What documentation is required when applying for the setting aside of an arbitral award?

Under the ROC, Order 69, Rule 5 (for awards under the AA) and Order 69, Rule 2 (for awards under the IAA), the following documentation is required:

- originating summons; and
- a supporting affidavit that exhibits a copy of the arbitration agreement or a record of the content of the arbitration agreement, the arbitral award, and any other document relied on by the applicant. The supporting affidavit must set out any evidence relied on by the applicant.

8 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 the application for the setting aside of an arbitral award? If yes, in what form must the translation be?

Documents that are not fully in English are to be translated into English if they are to be received, filed or used in court. Only court interpreters and qualified persons (i.e., private translators) may translate legal documents. Translations obtained from qualified persons must be verified by an affidavit made by a person qualified to translate the original document. The affidavit must accompany the original and translated documents when the original document is received, filed or used in court.

9 What are the other practical requirements relating to the setting aside of an arbitral award? Are there any limitations on the language and length of the submissions and of the documentation filed by the parties?

The submissions must be made in English. As to the form of the affidavits, they should have a blank margin not less than 35mm wide on all four sides of the paper and page numbers of the affidavit (including dividing sheets and exhibits) should be inserted at the centre top of the page. The top right-hand corner of the first page of the affidavit should also list the following information:

- the party on whose behalf the affidavit is filed;
- the name of the deponent;
- the ordinal number of the affidavit in relation to the previous affidavits filed in the cause or matter by the deponent; and
- the date the affidavit is to be filed.

If exhibits are filed in the affidavit, each exhibit should be separately bookmarked and follow the initials of the deponent of the affidavit. If there are more than 10 different documentary exhibits, a table of contents should be inserted before the first of these exhibits, enumerating every exhibit in the affidavit.

10 What are the different steps of the proceedings?

Proceedings are commenced by filing an originating summons under the IAA and AA (arbitration OS). In general, applications for setting aside are heard before an arbitration judge. A pretrial conference (PTC) will usually be conducted within two weeks of the filing of the arbitration OS with the supporting affidavit. Subsequent PTCs will be fixed to monitor compliance with directions given and ensure readiness for hearing. The court will generally endeavour to fix the hearing within eight to 12 weeks of the date of service of the arbitration OS.

11 May an arbitral award be recognised or enforced pending the setting- aside proceedings in your jurisdiction? Do setting aside proceedings have suspensive effect? If not, which court has jurisdiction over an application to stay the enforcement of the award pending the setting aside proceedings, and what are the different steps of the proceedings?

Under article VI of the Convention on the Enforcement and Recognition of Foreign Arbitral Awards of 1958 (the New York Convention) (IAA, Schedule 2) (which applies to the enforcement in Singapore of international arbitration awards made in Singapore as well as foreign awards), if an application for the setting aside or the suspension of an award has been made, the Singapore court may, if it considers it proper, adjourn a decision on the enforcement of the award. The court may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

In respect of foreign awards, an application may be made to adjourn enforcement proceedings under IAA, section 31(5)(a). This is granted at the discretion of the court, having considered:

- the merits of the setting-aside application, in particular being pursued in good faith;
- the likely consequences and resulting prejudice to either party of an adjournment; and
- all other relevant circumstances of the case (Man Diesel & Turbo SE v I.M. Skaugen Marine Services Pte Ltd[2019] 4 SLR 537).

Procedurally, the party seeking to enforce the arbitral award will make an application to the High Court (Enforcement Proceedings) for an ex parte order for leave to enforce the arbitral award (Ex Parte Order). This is an administrative application and the High Court will likely grant the Ex Parte Order.

The party seeking to stay the Enforcement Proceedings will have to challenge the Ex Parte Order by applying for it to be set it aside in a separate set of proceedings (Setting Aside Proceedings) under ROC, O69A R6(4). Once this is done, the party seeking to adjourn the Enforcement Proceedings would then file an interlocutory application to the High Court in the Enforcement Proceedings seeking to adjourn the said proceedings in light of the Setting Aside Proceedings. The steps involved in filing such an interlocutory application that is done by way of Summons filed along with a supporting affidavit containing the facts as to why enforcement ought to be stayed.

12 What are the grounds on which an arbitral award may be set aside?

Under the AA

Arbitral awards made under the AA may be set aside. An application to set aside an award must be made by filing an originating summons within three months of the applicant receiving the award (AA, section 48(2)). The grounds, under section 48(1) are as follows:

- 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

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

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 International Bar Association Rules) was not available to the arbitrator under the SCMA Rules. The decision was subsequently upheld by the Singapore Court of Appeal in *CBP v CBS* [2021] SGCA 4.

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). This time limit is strict even in the case of fraud discovered at a later date (*Bloomerry Resorts and Hotels Inc and another v Global Gaming Philippines LLC and another* [2020] SGHC 1).

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 Model Law, article 34(3) and ROC, Order 69A, Rule 2(4); for awards under the AA, see AA, section 48(2) and ROC, Order 69, Rule 2(1)).

13 What is the effect of the decision on the setting-aside application in your jurisdiction? What challenges are available?

The immediate effect of setting aside an award is that the award ceases to have legal effect in this jurisdiction. If an award has been set aside, this does not affect the continued validity and force of the arbitration agreement between the parties, unless the award was set aside on the ground of no arbitration agreement existing between parties. On that basis, subject to certain limitations, a party that obtained an award in arbitration that is then set aside by the court, may start a fresh arbitration on the basis that the dispute has not yet been resolved, and the arbitration agreement remains binding on parties for dispute resolution (*AKN and another v ALC and others and other appeals* [2016] 1 SLR 966).

14 Will courts take into consideration decisions rendered in relation to the same arbitral award in other jurisdictions or give effect to them (eg, in recognition or enforcement proceedings)?

Court decisions from other jurisdictions in relation to the same matter are not legally binding on the Singapore courts. Although the Singapore courts may look to these decisions for guidance, they will not necessarily follow them.

If the courts are satisfied that on any issue, the doctrine of *res judicata* is applicable, they will likely give effect to that decision. This applies only to decisions made by a foreign court. For example, if a party seeks to set aside a foreign award in the jurisdiction where the arbitration is seated on the basis of the arbitrator allegedly having been bribed and that foreign court finds no evidence of the alleged

bribery, then the Singapore courts are likely to follow the decision of the foreign court on the bribery issue if the same issue is raised in Singapore at the enforcement stage.

Applicable procedural law for recognition and enforcement of arbitral awards

15 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 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 (IAA, section 19) and to arbitral awards made in pursuance of an arbitration agreement in the territory of a New York Convention contracting state other than Singapore (IAA, section 29).

IAA, section 5 sets out the elements for 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 (AA, section 46(1)) and to arbitral awards that are made in a non-New York Convention contracting state (AA, section 46(3)).

IAA, sections 19 and 29 and AA, section 46(1) 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.

16 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?

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

17 Is there a time limit for applying for the recognition and enforcement of an arbitral award?

An application for leave to enforce must be made within six years of the date of the award (Limitation Act [Chapter 163], section 6).

18 Which court has jurisdiction over an application for recognition and enforcement of an arbitral award? Is there a specific court or chamber in place with specific sets of rules applicable to international 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 now comprises the General Division of the High Court and a new Appellate Division. There has been 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.

19 What are the requirements for the court to have jurisdiction over an application for recognition and enforcement and for the application to be admissible? 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 (New York Convention, article V; IAA, section 31).

Singapore courts may assume jurisdiction over an award debtor when 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 (ROC, Order 5, Rule 3).

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.

20 Are the recognition proceedings in your jurisdiction adversarial or ex parte? What are the different steps of the proceedings?

The ROC permit the application for leave to enforce an award under IAA, Section 19 and AA, section 46(1) to be made ex parte (see ROC, Order 69A, Rule 6 for enforcement under the IAA, and ROC, Order 69, Rule 14 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 ROC, Order 69, Rules 14(2), 14(3) and 14(4) for enforcement under the AA, and ROC, 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)).

21 What documentation is required to obtain recognition?

An application for leave to enforce an award is required to be made by way of an 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 (ROC, Order 69, Rule 14(1)(a)).

22 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? 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 ROC, Order 69A, Rule 6).

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 (ROC, Order 92, Rule 1).

23 What are the other practical requirements relating to recognition and enforcement? Are there any limitations on the language and length of the submissions and of the documentation filed by the parties?

A party seeking leave to enforce an award will need to pay court fees of S\$3,300 when filing the originating summons (see ROC, Order 110, Rule 47). 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 ROC, Appendix B (Court Fees)).

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

There are also electronic filing charges in respect of the above-mentioned documents, as well as other documents, such as written submissions or bundles of documents. For submissions and bundle of documents, the electronic filing charge is S\$4 per document plus S\$0.60 per page, and the charge for all other documents is S\$4 per document plus S\$0.80 per page (see ROC, Appendix B (Court Fees)). It should be noted that a document that is composed remotely using the computer system of the electronic filing service provider is deemed to comprise two pages.

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\$1,000 and S\$15,000 (excluding disbursements), depending on the duration of the hearing and the complexity and length of the application (see Supreme Court Practice Directions, Appendix G).

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

24 Do courts recognise and enforce partial or interim awards?

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

Under IAA, section 19 and AA, section 46, 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' (IAA, section 2(1); AA, section 2(1)).

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] to [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 a 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 AA, section 28(4) and IAA, section 12(6), 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.

25 What are the grounds on which an arbitral award may be refused recognition? Are the grounds applied by the courts different from those provided under article V of the New York 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 IAA, section 31, 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 during 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; and
- the enforcement of the award would be contrary to the public policy of Singapore.

26 What is the effect of 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 (ROC, Order 69, Rule 14(1)). 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 the period stipulated by the court granting leave, to apply to set aside the order.

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 (ROC, Order 69, Rule 14(4) and

ROC, Order 69A, Rule 6(4)). 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.

27 What challenges are available against a decision refusing recognition 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 (ROC, Order 57, Rule 4).

28 What are the effects of annulment proceedings at the seat of the arbitration on recognition or enforcement proceedings in your jurisdiction?

IAA, section 31(5) 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.

When 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 (IAA, section 31(5)).

In *Man Diesel & Turbo SE v IM Skaugen Marine Services Pte Ltd* [2019] 4 SLR 537, the Singapore High Court refused to adjourn an enforcement application on the ground that an application to set aside the award was pending in the Danish courts, noting that IAA, section 31(5) gave 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.

29 If the courts adjourn the recognition or enforcement proceedings pending annulment proceedings, will the defendant to the recognition or enforcement proceedings be ordered to post security?

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 (IAA, section 31(5)(b)).

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.

30 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 arbitral award is set aside after the decision recognising the award has been issued, what challenges are available?

If 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 IAA, section 31(2)(f) (which is modelled after New York Convention, article V(1)(e)) 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 these 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 IAA, section 31(5) allows a party to apply for enforcement proceedings to be adjourned pending disposal of an application to set aside. Having said that, as seen in the *Man Diesel & Turbo SE v IM Skaugen Marine Services Pte Ltd* [2019] 4 SLR 537, this could become a live issue depending on the outcome of the set-aside proceedings in the Danish courts. Furthermore, in *BAZ v BBA and others* [2018] SGHC 275 (confirmed in *BBA and others v BAZ and another matter* [2020] SGCA 53), the Singapore High Court had to consider a set-aside application (which it refused) after enforcement proceedings in respect of a Singapore-seated award had been completed in India and enforcement of the award had been allowed in that jurisdiction.

In *ST Group v Sanum Investments* [2019] SGCA 65, the Singapore Court of Appeal refused enforcement of an award in which 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.

Service

31 What is the procedure for service of extrajudicial and judicial documents to a defendant in your jurisdiction? If the extrajudicial and judicial documents are drafted in a language other than the official language of your jurisdiction, is it necessary to serve these documents with a translation?

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 ROC, Order 69A, Rules 6(2) and 6(4) (for proceedings under the IAA) and ROC, Order 69, Rules 14(2) and 14(4) (for proceedings under the AA). The application for leave to enforce a foreign award must be supported by an affidavit that exhibits the arbitration agreement and the duly authenticated original award and, if the agreement or award are in a language other than English, a translation of it in English, duly certified in English as a correct translation by a sworn translator, or by an official or a diplomatic or consular agent in the country in which the award was made [ROC, Order 69A, Rule 6(1A)(a)].

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 the debtor personally, or by sending a copy to the debtor's 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.

32 What is the procedure for service of extrajudicial and judicial documents to a defendant outside your jurisdiction? Is it necessary to serve these documents with a translation in the language of this jurisdiction? Is your jurisdiction a party to the 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Service Convention)? Is your jurisdiction a party to other treaties on the same subject matter?

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 ROC, Order 69A, Rule 6(3) (for proceedings under the IAA) and ROC, Order 69, Rule 14(3) (for proceedings under the AA). The order granting leave to enforce the award will necessarily be in English, being the language of the courts of Singapore.

Service out of the jurisdiction of ex parte 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 ROC, Order 11, Rule 3(3)).

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 ROC, Order 69, Rule 14(5) for the AA and Order 69A, Rule 6(5) for the IAA).

Singapore is not a contracting party to the Hague Service Convention and as such the simplified procedure therein to effect service is unavailable in Singapore. However, it has entered into the following civil procedure conventions:

- Convention between the United Kingdom and Austria regarding legal proceedings in civil and commercial matters;
- Convention between the United Kingdom and Italy regarding legal proceedings in civil and commercial matters;
- Convention between the United Kingdom and Germany regarding legal proceedings in civil and commercial matters; and
- Treaty on Judicial Assistance in civil and commercial matters between the Republic of Singapore and the People's Republic of China. Identification of assets

33 Are there any databases or publicly available registers allowing the identification of an award debtor's assets within your jurisdiction? Are there any databases or publicly available registers providing information on award debtors' interests in other companies?

There is no database that comprehensively lists a debtor's assets and certain information (eg, as bank accounts) are not available due to Singapore's banking secrecy laws.

Notwithstanding the above, certain databases are publicly available and can be used to identify assets. These include land records with information about property assets that are maintained by the Singapore Land Authority and are publicly searchable.

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.

34 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, ROC, Order 48, Rule 1(1) 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

35 What kinds of assets can be attached within your jurisdiction?

The property of the judgment debtor that may be attached includes money in a bank account, movable goods, ownership of, or interest in, land or securities, a fund or income payable under a trust.

There are certain exceptions to the property that can be seized (Supreme Court of Judicature Act, section 13), including wages, salaries, pensions, gratuities and allowances.

36 Are interim measures against assets available in your jurisdiction?

Interim measures against assets are available in Singapore in support of the enforcement of arbitration awards. AA, section 31 and IAA, section 12A empower the High Court to order interim measures in aid of arbitral proceedings. This power is exercised scrupulously, and only if it will assist in the just and proper conduct of arbitration, or in the preservation of property that is the subject of the arbitration.

The High Court may make orders or give directions for, inter alia, the preservation of any property that forms the subject 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, and 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 (State Immunity Act (Cap. 313) (SIA), section 15(2)) unless the state consents under SIA, section 15(3).

37 What is the procedure to apply interim measures against assets in your jurisdiction?

To apply for interim measures against assets in Singapore, pursuant to ROC, Order 29, Rule 1, 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 ROC, Order 32, Rule 3).

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 Vasilij 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 (Supreme Court Practice Directions, paragraph 41(1)).

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

Interim measures for urgent or interim protection pending the final resolution of the case may require the protection and preservation of the assets that are the subject of the dispute, or to secure and protect relevant evidence.

IAA, section 28(2) and IAA, section 12(1) allow a tribunal to order the preservation, interim custody or sale of any property that is, or form parts of, the subject of the dispute. AA, section 31 and IAA, section 12A recognise the power of the Singapore courts to make similar orders.

A writ of seizure may be issued in respect of immovable property (ROC, Order 46, Rules 4 and 5, using the prescribed Form 83). The writ of seizure enables the court official to seize and sell the property to satisfy the judgment or order.

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

A writ of seizure may be issued in respect of movable property (ROC, Order 46, Rule 4, using Form 82). The writ of seizure enables the court official to seize and sell the property to satisfy the judgment or order.

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

A writ of seizure may be issued in respect of intangible property such as securities (ROC, Order 46, Rules 6 and 7, using Form 98).

41 What is the procedure to attach assets in your jurisdiction?

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 (ROC, Orders 46 and 47), stop orders (ROC, Order 50) and the appointment of receivers (ROC, Order 51).

42 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 ROC, Order 47, 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 (ROC, Order 47, Rule 4(1)(e)). 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 (ROC, Order 47, Rule 4(1)(e)(iii)).

If the order is for the giving of possession of immovable property, the procedure is to issue a writ of possession. Under ROC, Order 45, Rule 3, 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.

43 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 ROC, Order 46, Rule 1. Leave is generally not required unless the writ is enumerated in ROC, Order 46, Rule 2.

Once the writ of seizure and sale is filed, the actual seizure and sale of the property seized are 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.

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

The process is similar to that in respect of movable property, although there are certain additional documents that need to be filed.

45 Are there specific rules applicable to the attachment of assets held by banks? Is it possible to attach in your jurisdiction sums deposited in bank accounts opened in a branch or subsidiary of a foreign bank located in your jurisdiction or abroad? Is it possible to attach in your jurisdiction the bank accounts opened in a branch or subsidiary of a domestic bank located abroad?

Under ROC, Order 49, if a bank or other financial institution is within the jurisdiction, a judgment creditor may commence garnishee proceedings to obtain an order for any debt due from the judgment debtor to be paid directly from the debtor's current or deposit account held with the bank or financial institution. The garnishee bank is, however, entitled to the costs of the application and those costs are deduced from the amount attached.

The procedure for garnishment has two steps: (1) 'show cause' order and (2) order absolute.

In respect of step (1), an application must be made by an ex parte summons supported by an affidavit in Form 102 (ROC, Order 49, Rule 2), which should identify the judgment or order to be enforced and the amount remaining unpaid, and state, to the best of the deponent's information or belief, (1) that the garnishee (i.e., the bank or financial institution) is within jurisdiction and is indebted to the judgment debtor, and (2) the sources of the information and the grounds for the deponent's belief.

If a garnishment order is granted, a 'show cause' order in Form 101 will specify the time and place for further consideration of the matter, and should be served personally at least seven days before the time appointed for further consideration on both the garnishee and the judgment debtor. If the garnishee subsequently disputes the debt, the court may summarily determine the issue or order in Form 104 for any such issue necessary for determining the liability of the garnishee to be tried (ROC, Order 49, Rule 5).

In respect of step [2] of the garnishment procedure, the court may make a final order against the garnishee if the garnishee does not attend or does not dispute the debts due. This final order may be enforced in the same manner as any other order for the payment of money.

A joint bank account may be garnished under ROC, Order 49 if it can be shown that:

- a strong prima facie case can be established that the whole of the moneys in the joint account belong to the judgment debtor;
- notice is given to the non-judgment debtor joint account holder(s); and
- an undertaking is provided by the judgment creditor to pay for any costs and reasonably foreseeable losses of the garnishee or non-judgment debtor joint account holder(s), should it be shown to the satisfaction of the court that the moneys subject to the 'show cause' order are not in fact payable in whole or in part to the judgment debtor (see *Timing Limited v Tay Toh Hin & Anor* [2020] SGHC 169).

As regards attachment, if attachment is pursuant to an arbitration award recognised by the Singapore courts that remains unsatisfied, then attachment is usually granted as a matter of course.

Recognition and enforcement against foreign states

46 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 (SIA, section 11(1)) and this is likely to apply to court proceedings relating to the recognition and enforcement of arbitral awards against foreign states.

47 What is the procedure for service of extrajudicial and judicial documents to a foreign state? Is it necessary to serve extrajudicial and judicial documents with a translation in the language of the foreign state?

SIA, section 14(1) 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. SIA, section 14(2) 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 (SIA, section 14(6)).

Further procedures for service of extrajudicial and judicial documents to a foreign state are governed by ROC, Order 11, Rule 7. In particular, the person who wishes to serve on a foreign state must file in the registry (i) a request for service to be arranged by the Permanent Secretary to the Ministry of Foreign Affairs, (ii) a sealed copy of the originating process, and (iii) except when the official language of the state is, or the official languages of that state include, English, a translation of the originating process in the official language or one of the official languages of the state (ROC, Order 11 Rule 7(1)).

48 May a foreign state invoke sovereign immunity (immunity from jurisdiction) to object to the recognition or enforcement of arbitral awards?

If there is a written agreement from the foreign state agreeing to submit the dispute to arbitration, the foreign state no longer has immunity from proceedings in the Singapore courts that relate to the arbitration. This includes recognition and enforcement of arbitral awards (SIA, section 11(1)). However, this does not apply where there is a contrary provision in the arbitration agreement. The waiver of sovereign

immunity stemming from the foreign state's arbitration agreement does not apply to disputes relating to the arbitration agreement itself.

49 May award creditors apply interim measures against assets owned by a sovereign state?

Yes, award creditors may apply interim measures against assets owned by a sovereign state.

State immunity does not arise in respect of arbitration proceedings relating to commercial transactions and contracts performed by a sovereign state in Singapore (SIA, section 5). Most commercial arbitrations involving sovereign states are about commercial transactions and contracts performed by them, therefore there is no immunity from interim measures.

If a sovereign state agrees in writing to submit the dispute to arbitration, the foreign state no longer has immunity from proceedings in the Singapore courts that relate to the arbitration, including recognition and enforcement of arbitral awards (SIA, section 11(1)).

While sovereign states are entitled to procedural privileges preventing certain reliefs including interim injunctions and enforcement of a judgment or arbitral award in relation to owned assets, the privileges do not apply if sovereign states give written consent (SIA, section 15(3); *Maldives Airports Co Ltd v GMR Malé International Airport Pte Ltd* [2013] 2 SLR 449). The procedural privileges preventing enforcement of a judgment or arbitral award also do not apply if the state owned assets are used or intended to be used for commercial purposes (SIA, section 15(4)).

Furthermore, even if sovereign states have not given written consent or the state-owned assets are not used for commercial purposes, interim measures can fall outside the scope of procedural privileges. Such privileges only apply to the execution or attachment against property in satisfaction of a judgment/final award and not to pre-judgment/interim measures (*The Ministry of Rural Development, Fishery, Craft, Industry and Environment of the Union of Comoros v Chan Leng Leng 'The Ministry'* [2013] 3 SLR 214).

50 Are assets belonging to a foreign state immune from enforcement in your jurisdiction? Are there exceptions to immunity?

Pursuant to SIA, section 15(2), 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 SIA, section 15(3), the state expressly agrees in writing to waive its immunity from execution or injunctive relief. The second is set out in SIA, section 15(4), 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 purposes.

51 Is it possible for a foreign state to waive immunity from enforcement in your jurisdiction? What are the requirements of waiver?

Pursuant to SIA, section 15(3), 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 section.

52 Is it possible for a creditor of an award rendered against a foreign state to attach the assets held by an alter ego of the foreign state within your jurisdiction?

As the doctrine of sovereign immunity also extends to proceedings involving property that is in the possession or control of a third party who is an agent or trustee of that state (see *Republic of the Philippines v Maler Foundation and others* [2008] 2 SLR(R) 857 at [46]), it may not be possible for a creditor to bring enforcement proceedings against assets held by an alter ego of the foreign state if it is able to prove its ownership of the assets.



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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. Fluent in Malay and bahasa Indonesia, Kohe has built a thriving energy practice in South-east Asia. She is recognised as one Singapore's 40 outstanding lawyers under 40 and has been consistently ranked 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 the Singapore Business Times and the Sri Lankan Daily News.



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Reed Smith's international arbitration practice spans the globe. With offices in the world's leading arbitral centres, including London, Paris, New York, Singapore, Hong Kong, Dubai, Miami, and Houston, we are ideally positioned to represent clients in international business disputes. We recently launched an expansion of our global arbitration practice, adding leading international arbitration lawyers in Paris, Singapore, Frankfurt, New York, and the United Arab Emirates, as well as Miami, where we added a market-leading team for Latin American disputes. With the addition of such recognised talent to our already-strong team, we now have one of the largest and most diverse international arbitration practices in the world, able to represent clients in every significant arbitral centre and seat around the globe. As a leading disputes firm, we also represent clients in arbitration-related proceedings in first instance and appellate courts, including stay and enforcement proceedings. Our geographic reach is coupled with deep industry knowledge. Many of our arbitration lawyers are embedded within industry groups, giving them practical experience of our clients' business in a wide range of sectors, including energy and natural resources, transportation, international trade, pharmaceuticals, life sciences, entertainment and media, financial services, telecoms, insurance, manufacturing, and construction. Our team has significant experience in investor-state disputes involving bilateral and multilateral treaties, under the auspices of ICSID and under the UNCITRAL rules, and in claims under the Energy Charter Treaty, advising and representing international investors, states, and state-owned entities in a wide range of disputes.

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