

Enforcing ICSID Convention arbitration awards in Singapore: overview

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This note describes the legal framework in Singapore for the enforcement of investment treaty arbitration awards rendered under the ICSID Convention. It considers whether Singapore has implemented specific laws and procedures addressing ICSID awards, including whether there are any grounds on which enforcement may be refused or stayed. The note also discusses the approach to state immunity in Singapore and the available methods of execution.

Scope of this note

This note sets out the national laws and procedures in Singapore relevant to the enforcement of investment treaty arbitration awards rendered under the ICSID Convention. The enforcement of arbitration awards rendered under the [ICSID Convention](#) has a number of notable differences from the enforcement of non-ICSID awards under, for example, the New York Convention. Accordingly, this note addresses whether Singapore has enacted any specific legislation implementing the ICSID Convention, and which courts are competent to hear applications to enforce ICSID awards. It considers whether the law of Singapore recognises any grounds on which the enforcement of an ICSID award may be stayed or refused, as well as whether enforcement may be made conditional on the granting of security for costs.

Since the enforcement of ICSID Convention awards will always be sought against state assets, the note also considers the national law position on state immunity in Singapore, as well as what methods of execution are available to an award creditor.

ICSID Convention background

ICSID arbitration

Investment treaty arbitration, sometimes referred to as investor-state dispute settlement (ISDS), refers to arbitrations between a company or individual investor, on the one hand, and a foreign state on the other, concerning the alleged breach of the state's

obligations arising under an investment protection treaty, whether a bilateral investment treaty (BIT) or a multilateral investment treaty (MIT). For an introduction to investment treaty arbitration, and its key concepts, see [Video, International arbitration \(7\): resolving disputes under investment treaties](#) and [Practice note, Investment treaty arbitration: overview](#).

The most common forum for resolving ISDS cases is under the ICSID Convention, with arbitrations administered by the International Centre for Settlement of Investment Disputes (ICSID). There are various peculiarities to ICSID arbitrations, notably that they have no seat of arbitration and that national courts have no supervisory jurisdiction over the proceedings (see [Practice note, Investment treaty arbitration: overview: ICSID Convention and arbitration](#)).

Recognition and enforcement versus execution

The [ICSID Convention](#) regime shields awards from review by national courts at the recognition and enforcement stage, and requires that:

“Each Contracting State shall recognise an award rendered pursuant to [the ICSID] Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State.” (*Article 54(1), ICSID Convention*.)

It follows that, in principle, there are no grounds on which the courts of a contracting state to the

ICSID Convention should refuse to recognise an ICSID award, and enforce the pecuniary obligations imposed by it.

However, while recognition and enforcement are insulated from national laws, execution of the award against specific assets is not. This is governed by the laws on the execution of judgments in the state where execution is sought (*article 54(3), ICSID Convention*). Therefore, the host state's consent to ICSID arbitration does not amount to a waiver of immunity from execution and, unless otherwise agreed (in a form of express waiver from immunity, for example), a state is free to raise sovereign immunity as a shield to the execution of the award against its assets. Sovereign immunity laws vary between jurisdictions and these are unaffected by the ICSID Convention (*article 55*). Some jurisdictions apply the doctrine of absolute immunity from execution. Others apply qualified immunity, which may allow execution against sovereign assets, which are used for commercial purposes, or against assets related to the obligation to be enforced. (See [Practice note, Procedural steps in an ICSID arbitration \(2022 Rules\): Recognition, enforcement and execution of ICSID awards](#) and [State immunity and arbitration](#)).

For further resources, see:

- [ICSID arbitration toolkit](#).
- [Investment treaty arbitration toolkit](#).

Status of the ICSID Convention in Singapore

Ratification and exclusions

Singapore ratified the [ICSID Convention](#) on 14 October 1968 and it entered into force on 13 November 1968.

Once ratified, the ICSID Convention applies to all territories for whose international relations a contracting state is responsible, unless the state submits a written notice indicating otherwise, whether at the point of ratification or subsequently (*article 70*). Singapore has not notified any territorial exclusions.

For further details, see [List of ICSID Convention contracting states and other signatories of the Convention](#) and [ICSID: Database of ICSID Member States: Singapore](#).

Implementing legislation

The [Arbitration \(International Investment Disputes\) Act 1968](#) (AIIA) was enacted to implement

Singapore's obligations under the [ICSID Convention](#). It entered into force on 10 September 1968. Among other things, it:

- Sets out the right of persons to have ICSID Convention awards registered, subject to the proof of certain matters, and the effect of registration (*sections 4(1) and 5, AIIA*).
- Excludes the application of the [Arbitration Act 2001](#) (AA 2001) (which addresses domestic arbitration) to ICSID proceedings (*section 8, AIIA*).
- Sets out the provisions of the ICSID Convention which have the force of law notwithstanding anything to the contrary in any written law (*section 9, AIIA*).

Framework for enforcing ICSID Convention awards

Competent courts for enforcement applications

Section 4(1) of the [AIIA](#) provides that a person seeking recognition or enforcement in Singapore of an ICSID Convention award shall be entitled to have it registered in the General Division of the High Court, subject to proof of any matters that may be prescribed and to the other provisions of the AIIA.

Procedure for recognition and enforcement

If you are seeking to have an ICSID award recognised and enforced, you are "entitled" to have it registered in the General Division of the High Court, subject to proof of any matters that may be prescribed and to the other provisions of the [AIIA](#) (*section 4(1), AIIA*). The pecuniary obligations imposed by the award shall be registered, together with the reasonable costs of and incidental to registration (*section 4(2), AIIA*).

When applying to register an [ICSID Convention](#) award under the AIIA, the procedure is set out in the [Arbitration \(International Investment Disputes\) Rules](#) (AII Rules) and specified provisions of Order 60 of the Rules of Court 2021 (Court Rules), and follows those for the registration of foreign judgments.

The application must be made by originating application (*rule 3, AII Rules*), supported by an affidavit, which must:

- Exhibit a copy of the certified ICSID Convention award.
- State the names, trades or businesses, together with the usual or last known places of residence or business, of the parties.

- State that, to the best of the information or belief of the deponent, the award creditor is entitled to enforce the award and the award has not been satisfied (or, if the award has been partially satisfied, the amount that remains unsatisfied).
- State whether enforcement of the award has been stayed (provisionally or otherwise) pursuant to the ICSID Convention and whether any application has been made pursuant to the ICSID Convention which, if granted, might result in a stay of enforcement.

(Order 60, rule 3(1), Court Rules and rule 4, AIID Rules.)

Notice of the registration must be served on the award debtor personally, unless the court orders otherwise, and service of the notice out of Singapore does not require permission. The notice must state:

- Full particulars of the registered award and the order for registration.
- Name and address of the award creditor or its solicitor, on whom any summons issued by the award debtor may be served.

(Order 60, rule 7, Court Rules.)

The person who serves the notice of registration must get it (or a copy of it) endorsed with the date of service within three days (or such longer time allowed by the court). If this is not done, the award creditor will need the court's permission to apply for an enforcement order (Order 60, rule 8, Court Rules).

A party wishing to enforce a registered ICSID Convention award must apply for an enforcement order. The application must be supported by an affidavit of service of the notice of registration (which must state the date on which the notice was endorsed), together with any orders made by the court in relation to the award (Order 60, rule 10(3), Court Rules).

Once registered, the pecuniary obligations of an ICSID Convention award shall have the same force and effect for the purposes of enforcement as a judgment of the General Division of the High Court given when the award was rendered pursuant to the ICSID Convention and entered on the date of registration under the AIIDA (section 5, AIIDA).

Grounds for refusing recognition and enforcement

Article 54 of the ICSID Convention requires contracting states to recognise awards as binding and enforce the pecuniary obligations imposed by an award as if it were a final judgment of a court in that state. Section 4(1) of the AIIDA provides that a person seeking recognition or enforcement

in Singapore of an ICSID Convention award shall be entitled to have it registered in the General Division of the High Court, subject to proof of any matters that may be prescribed and to the other provisions of the AIIDA. Provided that the procedure is complied with, there are no grounds for resisting such an application.

Enforcement conditional on grant of security for costs

There are no grounds on which recognition and enforcement of an ICSID award can be resisted, meaning there is nothing to which such an order to provide security could attach.

Staying enforcement

Where the enforcement of an award has been stayed (provisionally or otherwise) under the ICSID Convention, the General Division of the High Court must stay enforcement for whatever period it considers appropriate in the circumstances. Where an application has been made pursuant to the ICSID Convention which, if granted, might result in a stay of the enforcement of the award, then the court may stay enforcement for any period it considers appropriate. (Rule 6, AIID Rules.)

Freezing assets in aid of enforcement

The AIIDA is silent on this matter. The AIIDA excludes the application of the AA 2001 (which deals with domestic arbitration) to proceedings pursuant to the ICSID Convention (section 8, AIIDA). The AIIDA has not been amended to exclude the International Arbitration Act 1994 (which deals with international arbitration) since the latter was enacted.

However, since a registered ICSID award is of the same force and effect for the purposes of enforcement as a judgment of the General Division of the High Court, it is arguable that the court could exercise its power to grant a post-judgment freezing injunction under Order 13 of the Court Rules, where the court considers that it would be just and convenient to do so.

Available methods of execution

An ICSID Convention award, which has been registered, shall have the same force and effect for the purposes of enforcement as a judgment of the General Division of the High Court (section 5, AIIDA).

Any party wishing to apply for an enforcement order to enforce a registered ICSID Convention award must produce an affidavit of service of the notice of

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registration of the award and any order made by the Court in relation to the award (Order 60, rule 10(3), *Court Rules*).

The enforcement order is the official basis for execution by the award creditor, using the various execution procedures available to the award creditor under the Court Rules, which include:

- Seizure and sale of property belonging to the award debtor for the purposes of satisfying the award.
- Attachment of a debt by which a non-party is directed to pay the judgment creditor.

(Order 22, *Court Rules*.)

A party seeking enforcement takes out a single application for one or more methods of execution (Order 2, rule 14, *Court Rules*).

Singapore's approach to state immunity

Singapore law recognises the immunity of state parties from Singapore court process, subject

to certain exceptions laid down in the [State Immunity Act 1979](#) (SIA 1979). For this purpose, different considerations apply to recognition and enforcement of an award, and execution on the award by the subsequent step of seizure and sale of a state's assets in accordance with an already obtained enforcement order in the same manner as a judgment.

A valid arbitration agreement (embodied, for example, by the applicable bilateral investment treaty under which the ICSID arbitration was brought) amounts to a waiver of state immunity from proceedings in the Singapore courts relating to the arbitration (*section 11, SIA 1979*). This will include proceedings for recognition and enforcement of an award.

At the execution stage, attachment of a state asset is possible where the state has expressly provided written consent, or where the asset is for the time being in use or intended for use for commercial purposes (*section 15, SIA 1979*).

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