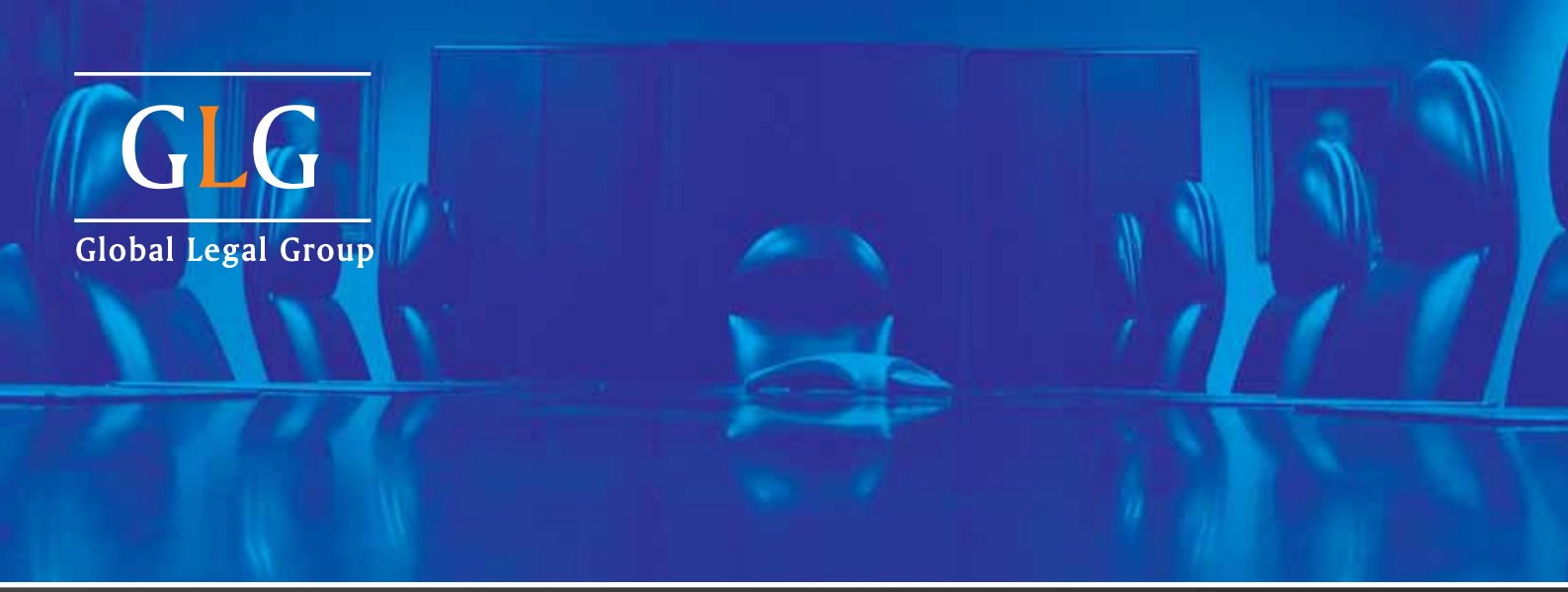

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The International Comparative Legal Guide to:
International Arbitration 2011
A practical cross-border insight into international arbitration work

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The International Comparative Legal Guide to: International Arbitration 2011

Chapter 15

Singapore

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1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of Singapore?

As a preliminary point, there are two separate arbitration regimes in Singapore — an international regime under the International Arbitration Act ("IAA"), Cap. 143A, and a domestic regime under the Arbitration Act ("AA"), Cap. 10. This guide will only address the position under the international regime.

An arbitration agreement may be in the form of an arbitration clause in a contract or a separate agreement (Article 7, Model Law). It has to be in writing. This requirement will be satisfied if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of communication which provide a record of the agreement. The definition of "arbitration agreement" now includes an agreement made by electronic communications, including emails and other electronic data messages (Section 2(1), IAA). In all instances, the key is for parties to evince a clear intention to resolve all disputes by arbitration.

1.2 What other elements ought to be incorporated in an arbitration agreement?

Other key elements include the seat of the arbitration, the arbitral rules and institution (if any), the number and qualifications of the arbitrators and the language of the arbitration. In *Insigma Technology Co Ltd v. Alstom Technology Ltd* [2009] 3 SLR(R) 936, in which Hogan Lovells acted for the successful party (Alstom Technology Ltd) in the underlying arbitration, the Singapore Court of Appeal considered the validity of a hybrid clause which provided for one arbitral institution (in this case, the Singapore International Arbitration Centre ("SIAC")) to administer an arbitration under the rules of another (the ICC). The clause was held to be valid, but parties must continue to take extreme care not to make choices which render a clause unworkable and therefore unenforceable.

1.3 What has been the approach of the national courts to the enforcement of arbitration agreements?

The Singapore Courts are supportive of all aspects of the arbitration process, including the enforcement of arbitration agreements. As noted by the *Singapore Court in Tjong Very Sumito and Ors v. Antig Investments Pte Ltd* [2009] 4 SLR(R) 732, "*an unequivocal judicial policy of facilitating and promoting arbitration has firmly taken root in Singapore. ... More fundamentally, the need to respect party autonomy (manifested by their contractual bargain) ... has been accepted as the cornerstone underlying judicial non-intervention in arbitration*".

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration proceedings in Singapore? Were there any significant changes made to that arbitration legislation in the past year?

The relevant provision is Section 6, IAA, pursuant to which a party may apply to the Singapore Court for a mandatory stay of any proceedings in favour of arbitration. The Court must grant a stay order unless it is satisfied that the arbitration agreement is "*null and void, inoperative or incapable of being performed*". There have been no changes to the IAA since those which took effect on 1 January 2010.

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do they differ?

As noted above, there are two separate arbitration regimes in Singapore. An arbitration will be "international" if it satisfies the conditions set out in Section 5(2), IAA. Parties to an "international" arbitration are free to opt-out of the international regime under the IAA and opt-in to the domestic regime under the AA, and *vice-versa*.

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?

The IAA expressly adopts the Model Law as the law in Singapore (as a Schedule thereto), but modifies the Model Law in respect of, in particular: the manner of appointing the third arbitrator (where there are three arbitrators); powers to order interim measures; court assistance in taking evidence; confidentiality of proceedings; and grounds for setting aside an award and immunity of arbitrators.

2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in Singapore?

Parties are generally free to agree any arbitral procedure which is

not inconsistent with a provision of the IAA or the Model Law "from which the parties cannot derogate" (Section 15A(1), IAA). In practice, it is fairly clear from the IAA and the Model Law which are the provisions that parties can derogate from - those which expressly make reference to a party's right to agree to the contrary — but (unlike the regime under the English Arbitration Act) there is at present no definitive statutory or judicial guidance as to those provisions of the IAA and the Model Law from which parties may not derogate.

3 Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of Singapore? What is the general approach used in determining whether or not a dispute is "arbitrable"?

Section 11(1), IAA prohibits disputes that are contrary to public policy from being submitted to arbitration. Broadly speaking, disputes which have a public dimension or which may affect the rights of third parties, such as criminal matters, bankruptcy and insolvency issues, family law matters, and intellectual property, will not be arbitrable, but the Singapore Courts have not provided comprehensive guidance on this. Conversely, all disputes which relate to "commercial" (as defined in Article 1(1), Model Law), transactions or issues will properly be referable to arbitration.

3.2 Is an arbitrator permitted to rule on the question of his or her own jurisdiction?

Yes. An arbitrator is expressly empowered to do so under Article 16 of the Model Law, which reflects the well-established principle of *kompetenz-kompetenz*.

3.3 What is the approach of the national courts in Singapore towards a party who commences court proceedings in apparent breach of an arbitration agreement?

See question 2.1 above.

3.4 Under what circumstances can a court address the issue of the jurisdiction and competence of the national arbitral tribunal? What is the standard of review in respect of a tribunal's decision as to its own jurisdiction?

Where an arbitral tribunal has made a preliminary ruling that it has jurisdiction, any party may apply to the Singapore Court to decide the issue within 30 days of receipt of that ruling, which decision shall be subject to no appeal (Article 16(3), Model Law). It has, however, been held that where an arbitral tribunal rules that it does not have jurisdiction, there would be no appeal or recourse against any such ruling (*PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA* [2006] SGCA 41).

3.5 Under what, if any, circumstances does the national law of Singapore allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

A non-contracting third party beneficiary may be treated for the purposes of the IAA as a party to the arbitration agreement in a situation where there are disputes between himself and the party against whom he is seeking to enforce a substantive term of the contract (Section 9, Contracts (Rights of Third Parties) Act, Cap. 53B).

3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in Singapore and what is the typical length of such periods? Do the national courts of Singapore consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?

Under Singapore law, the relevant limitation periods are prescribed by the Limitation Act, Cap. 163, which applies to both arbitration and Court proceedings (Section 8A, IAA). For cases founded on a contract or tort, the limitation period is six years. The Singapore Courts have not explicitly dealt with the question of whether the rules in the Limitation Act are procedural or substantive in the arbitration context. In the context of litigation proceedings in Singapore, limitation periods are treated as procedural matters.

3.7 What is the effect in Singapore of pending insolvency proceedings affecting one or more of the parties to ongoing arbitration proceedings?

Generally speaking, matters relating to insolvency are not arbitrable as a matter of public policy (see question 3.1 above). This principle was recently upheld in *Petroprod Limited v Larsen Oil and Gas Pte Ltd* [2010] SGHC 186.

4 Choice of Law Rules

4.1 How is the law applicable to the substance of a dispute determined?

The applicable substantive law is usually expressly provided for in the contract, failing which this will be determined by reference to conflict of law principles. This will involve an exercise of inferring the parties' intention regarding governing law from the circumstances, or where this is not possible, by applying the objective test of which system of law has the "closest and most real connection" with the subject matter of the contract.

4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

Parties are free to opt-out of the provisions of the IAA and Model Law, save for those provisions from which the parties cannot derogate (see question 2.5 above).

4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

An arbitration agreement is recognised as a valid and binding contract and parties are free to designate any substantive law they wish to govern the formation, validity and legality of the arbitration agreement. Failing an express choice by the parties, the position will be determined by reference to the conflict of law rules (see question 4.1 above).

5 Selection of Arbitral Tribunal

5.1 Are there any limits to the parties' autonomy to select arbitrators?

No. Parties are free to agree on the nomination of whoever they wish as arbitrators and the arbitrators are free to accept such appointment (subject to their availability and the applicable conflict of interests and disclosure rules). Parties may also expressly provide in the arbitration agreement that one or more arbitrators are to be nominated by a specified third party or institution.

5.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

The default procedure is that the arbitral tribunal will be appointed by the relevant "appointing authority", which is specified as the Chairman of the SIAC (section 8(2), IAA).

5.3 Can a court intervene in the selection of arbitrators? If so, how?

The Court can hear and decide applications which are brought by parties to challenge the appointment of any arbitrator (Article 13(3), Model Law). The parties can also apply to remove an arbitrator for failure or impossibility to act (Article 14(1), Model Law).

5.4 What are the requirements (if any) as to arbitrator independence, neutrality and/or impartiality and for disclosure of potential conflicts of interest for arbitrators imposed by law or issued by arbitration institutions within Singapore?

When a potential arbitrator is approached in connection with a possible appointment, he must disclose any circumstances that are likely to give rise to "justifiable doubts as to his impartiality or independence" (Article 12(1), Model Law). It has been held that "justifiable doubts" will arise where there is a real likelihood of bias or grounds for reasonable suspicion of bias on the part of the arbitrator. From the time of his appointment until the end of the arbitration proceedings, the arbitrator has an ongoing duty to immediately disclose to the parties any change in such circumstances.

6 Procedural Rules

6.1 Are there laws or rules governing the procedure of arbitration in Singapore? If so, do those laws or rules apply to all arbitral proceedings sited in Singapore?

The IAA, including the Model Law as modified, governs the procedure of all international arbitrations which are seated in Singapore. Parties are however free to adopt any arbitral rules they wish to govern the conduct of the proceedings, failing which the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate (Article 19, Model Law). Most often, the parties choose to adopt the SIAC Rules or rules of other major arbitral institutions (such as the ICC Rules, the LCIA Rules and the AAA Rules etc.).

6.2 In arbitration proceedings conducted in Singapore, are there any particular procedural steps that are required by law?

Broadly speaking, parties are free to designate rules or agree on the arbitral procedures between themselves (in accordance with the principle of party autonomy - see questions 1.3 and 6.1 above). In practice, the procedural steps in an international arbitration in Singapore will normally mirror those in international arbitrations elsewhere, including for example, the use of notices of arbitration, preliminary meetings, submission of statements of case and defences, exchange of witness, expert and documentary evidence, interlocutory hearings if any, main substantive hearings, followed by the rendering of the award.

6.3 Are there any rules that govern the conduct of an arbitration hearing?

See questions 6.1 and 6.2 above.

6.4 What powers and duties does the national law of Singapore impose upon arbitrators?

The arbitral tribunal is generally required to act fairly and impartially, treat the parties with equality (in particular, giving each party a reasonable opportunity to present its case) and conduct the arbitration without unnecessary delay or expense. As referred to in question 5.3 above, parties can apply to the Court to remove an arbitrator for failure or impossibility to act. The Singapore Court recently held that a tribunal has a duty to render a complete decision in respect of all issues that were referred to it for arbitration (*Shanghai Tunnel Engineering Co Ltd v Econ-NCC Joint Venture* [2010] SGHC 252).

6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in Singapore and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in Singapore?

Under the Legal Profession Act ("LPA"), Cap. 161, only advocates and solicitors who have been admitted to the roll in Singapore and who are practising in local firms with valid practising certificates have rights of audience before the Courts in Singapore. Therefore, where a foreign firm has conduct of an international arbitration sited in Singapore, it must engage a local firm to appear in respect of any related proceedings before the Singapore Courts, for example in respect of applications before the Courts for interim relief or for enforcement of an arbitral award.

6.6 To what extent are there laws or rules in Singapore providing for arbitrator immunity?

Section 25, IAA provides that an arbitrator shall not be liable for negligence in respect of anything done or omitted to be done in the capacity of an arbitrator, or any mistake in law, fact or procedure made in the course of arbitration proceedings or in the making of an arbitral award.

6.7 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

Yes. See question 5.3 above and question 7.2 below.

6.8 What is the approach of the national courts in Singapore towards *ex parte* procedures in the context of international arbitration?

The Singapore Courts are now empowered under Section 12A of the IAA to grant interim measures, whether on an *ex parte* basis or otherwise, in support of Singapore seated arbitrations and arbitrations seated outside of Singapore.

7 Preliminary Relief and Interim Measures

7.1 Is an arbitrator in Singapore permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitrator seek the assistance of a court to do so?

An arbitral tribunal will have the power to award interim relief without assistance from the Court by virtue of Section 12, IAA. The IAA expressly permits the award of interim relief for: (i) security for costs; (ii) discovery of documents and interrogatories; (iii) giving of evidence by affidavit; (iv) the preservation, interim custody or sale of any property forming the subject matter of the dispute; (v) the taking of samples, making observations or conducting experiments upon any property forming the subject matter of the dispute; (vi) the preservation and interim custody of any evidence for the purposes of the proceedings; (vii) the examination of any party or witnesses on oath or affirmation; (viii) securing the amount in dispute; (ix) ensuring that any award is not rendered ineffectual by the dissipation of assets by a party; and (x) awarding an interim injunction or any other interim measure.

7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

By virtue of Section 12A, IAA (which came into effect on 1 January 2010 and was enacted in response to the Singapore Court of Appeal decision of *Swift Fortune Ltd v Magnifica Marine SA* [2007] 1 SLR 629), the Singapore Court can order interim relief in support of any international arbitration (irrespective of whether it is seated in Singapore) if, and only if, the arbitral tribunal has no power or is unable for the timebeing to act effectively. The Court is expressly empowered to order interim relief for all the aspects set out in question 7.1 above, save for security for costs, discovery of documents and interrogatories, and giving of evidence by affidavit. It should also be noted that an order made by the Court will cease to have effect (in whole or in part) if and when the arbitral tribunal makes an order which expressly relates, in whole or part, to the Court's order (Section 12A(7), IAA).

7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

The Courts have consistently adopted an approach of minimal judicial intervention. As noted at question 7.2 above, it is now expressly provided by Section 12A, IAA that the Courts will only intervene to make an order for interim relief where the arbitral tribunal has no power to do so or is unable for the timebeing to act effectively.

7.4 Under what circumstances will a national court of Singapore issue an anti-suit injunction in aid of an arbitration?

If the arbitration is seated in Singapore and the commencement of foreign proceedings would amount to a breach of the agreement to arbitrate, the Singapore Court would have the power to grant an anti-suit injunction to restrain the party from bringing the foreign proceedings. The power to grant such injunctive relief is discretionary, although it would normally be exercised in favour of an injunction unless the foreign proceedings were at an advanced stage. Any foreign substantive judgment reached in breach of an arbitration clause will not normally be recognised or enforced in Singapore (*WSG Nimbus Pte Ltd v Board of Control for Cricket in Sri Lanka* [2002] 3 SLR 603).

7.5 Does the national law allow for the national court and/or arbitral tribunal to order security for costs?

An arbitral tribunal is expressly permitted under Section 12(1)(a), IAA to make an award for security of costs. The IAA does not expressly permit a Court to grant this.

8 Evidentiary Matters

8.1 What rules of evidence (if any) apply to arbitral proceedings in Singapore?

The Singapore Evidence Act, Cap. 97 applies only to Court proceedings in Singapore. Parties to international arbitration proceedings in Singapore may choose to adopt specific rules of evidence, such as the IBA Rules on the Taking of Evidence. Failing this, by virtue of Article 19, Model Law, an arbitral tribunal will have the power to determine the admissibility, relevance, materiality and weight of any evidence submitted in arbitration proceedings. The arbitral tribunal has a relatively broad and unfettered discretion in this regard.

8.2 Are there limits on the scope of an arbitrator's authority to order the disclosure of documents and other disclosure (including third party disclosure)?

As noted above in question 7.1, an arbitral tribunal has the power to order discovery of documents (including from third parties) and interrogatories. Any such disclosure will be subject to applicable rules of privilege and confidentiality.

8.3 Under what circumstances, if any, is a court able to intervene in matters of disclosure/discovery?

See questions 7.2 and 7.3 above.

8.4 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal? Is cross-examination allowed?

These are aspects that are usually discussed and agreed on between the parties, or failing that, decided by the arbitral tribunal. These issues are addressed by the IBA Rules on Taking Evidence, which as referred to above the parties may agree on to adopt in the arbitration clause or by subsequent agreement. Given that Singapore is a common law jurisdiction, it is quite usual to see

evidence being presented in the form of written witness statements and for witnesses to appear at the hearing to give oral evidence (they will often be sworn in or affirmed before the arbitral tribunal, though that is not a requirement). Normally, witnesses would confirm reliance on their written statements as their evidence-in-chief, which would be followed by an opportunity for cross-examination by the other side and/or re-examination by their own representatives.

Arbitral tribunals are empowered, by virtue of Sections 12(1)(c) and 12(2), IAA, to make appropriate orders for the giving of evidence by affidavit and the administration of oaths or affirmations by parties and/or witnesses. Also, the Court may grant a subpoena to compel a witness who resides in Singapore to attend before an arbitral tribunal to testify or produce documents (Section 13(2), IAA).

8.5 Under what circumstances does the law of Singapore treat documents in an arbitral proceeding as being subject to privilege? In what circumstances is privilege deemed to have been waived?

Although this issue has not been finally settled by the Singapore Courts, it is widely accepted that the common law rules of privilege, including, in particular, legal advice and litigation privilege, will apply in arbitration proceedings as they do in litigation proceedings. Thus, for example, documents that form part of an exchange of communications between a solicitor and his client and were created for the dominant purpose of obtaining or giving legal advice will generally be privileged. Privilege belongs to the party and it can be waived, for example, by express consent or disclosing or putting into evidence the privileged document (or part thereof).

9 Making an Award

9.1 What, if any, are the legal requirements of an arbitral award?

The legal requirements for an award are contained in Article 31, Model Law and are essentially that: (i) the award must be in writing; (ii) the award must be signed by the arbitrator (where there is a sole arbitrator), or by the majority of arbitrators (where there is more than one arbitrator), provided that the reason for any omitted signature is stated; (iii) the award must state the reasons upon which it is based, unless parties have agreed that no grounds are to be stated or the award is on agreed terms pursuant to a settlement; (iv) the date of the award and seat of arbitration must be stated (the award will be deemed to have been made at the seat of the arbitration); and (v) after the award is made, a duly signed copy of the award must be delivered to each party.

10 Appeal of an Award

10.1 On what bases, if any, are parties entitled to appeal an arbitral award?

For arbitrations falling under the IAA, the award is final and binding and there is no right of appeal as such on the merits. An application to the Singapore Court to set aside an arbitration award may only be made on limited grounds: invalidity of the arbitration agreement; failure to give notice of the proceedings or to accord a party the opportunity to present its case; the arbitral tribunal acting *ultra vires* in making the award; the composition of the arbitral tribunal or procedure not as agreed by the parties; the subject of the matter of the dispute not being capable of settlement by arbitration; or the award being contrary to public policy (Article 34, Model Law); alternatively, on the grounds that the making of the award had been induced or affected by fraud or corruption, or that there has been a breach of the rule of natural justice by which the rights of any party have been prejudiced (Section 24, IAA).

It has been held that the grounds for setting aside awards are exclusively prescribed under the IAA and hence, even if an award was perverse, irrational or so unreasonable that no reasonable arbitral tribunal could have come to the same decision, this would not be a valid ground for setting it aside (see *Sui Southern Gas Co Ltd v. Habibullah Coastal Power Co (Pte) Ltd* [2010] SGHC 62). However, in the recent case of *Front Row Investment Holdings (Singapore) Pte Ltd v Daimler South East Asia Pte Ltd* [2010] SGHC 80, the Singapore Court set aside part of an award on the grounds of a breach of natural justice because the arbitrator had inexplicably dismissed the applicant's counterclaim due to his misapprehension that it had abandoned one of its related material arguments.

10.2 Can parties agree to exclude any basis of appeal or challenge against an arbitral award that would otherwise apply as a matter of law?

This is only relevant to domestic arbitrations falling under the AA and not international arbitrations under the IAA.

10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

No. As referred to above, for international arbitrations falling under the IAA, there is no right of appeal as such on the merits and the grounds for a party to set aside an award as expressly provided for under the relevant provisions of the IAA, as referred to above (question 10.1).

10.4 What is the procedure for appealing an arbitral award in Singapore?

Again, this is only relevant to arbitrations falling under the AA and not the IAA.

11 Enforcement of an Award

11.1 Has Singapore signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

Singapore acceded to the New York Convention ("NYC") in 1986. It has entered the reciprocity reservation. Part III of the IAA deals with Foreign Awards and the Second Schedule of the IAA contains the NYC.

11.2 Has Singapore signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

No, it has not.

11.3 What is the approach of the national courts in Singapore towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

The Singapore Courts are well known for being supportive of all aspects of the arbitration process, including recognising and enforcing arbitral awards. Section 19, IAA provides that Singapore arbitral awards made under the IAA may, with leave of the Court, be enforced in the same manner as a judgment or order of the Singapore Court. Foreign awards made in a NYC country outside Singapore may be enforced in the same manner as a Singapore award (Section 29, IAA).

Broadly speaking, there are two 'stages' involved in the enforcement process: (i) first, the party seeking enforcement is required to produce the authenticated award and written arbitration agreement to the Court (the Courts will adopt a "mechanistic" approach in establishing whether the requirements have been met); and (ii) secondly, the party seeking to resist enforcement is required to show that one of the grounds under Section 31(2), IAA has been established (the Courts have indicated that they will be prepared to delve into the circumstances of the award to determine whether grounds for refusal of enforcement have been established (see *Denmark Skibstekniske Konsulenter A/S I Likvidation (formerly known as Knud E Hansen A/S) v. Ultrapolis 3000 Investments Ltd (formerly known as Ultrapolis 3000 Theme Park Investments Ltd)* [2010] SGHC 108)).

11.4 What is the effect of an arbitration award in terms of *res judicata* in Singapore? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

The principle of *res judicata* applies to arbitration proceedings and hence matters and issues which have been finally determined by an arbitral tribunal under the IAA or AA cannot be re-heard in a Singapore Court. One might apply to a Singapore Court for an anti-suit injunction to prevent a party who has lost the arbitration from reopening issues resolved by the arbitrators in another forum.

11.5 What is the standard for refusing enforcement of an arbitral award on the grounds of public policy?

This is a high threshold. The applicant must identify a particular public policy which it alleges the award breaches and then show that the error was of such a nature that enforcement of the award would "shock the conscience", be "clearly injurious to the public good" or would contravene "fundamental notions and principles of justice" (*AJT v AJU* [2010] SGHC 201). Errors of law or fact, *per se*, do not engage the public policy of Singapore (*PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA* [2007] 1 SLR(R) 597). See also question 10.1 above.

12 Confidentiality

12.1 Are arbitral proceedings sited in Singapore confidential? What, if any, law governs confidentiality?

The Singapore Courts have held that parties to an arbitration are under a general duty of confidentiality which is consistent with the parties' expectations that arbitration proceedings are confidential, but what exactly that duty encompasses would depend on the circumstances of each case and the duty is subject to exceptions (*Myanma Yaung Chi Oo Co Ltd v. Win Win Nu and Anor* [2003] SGHC J 24; *International Coal Pte Ltd v. Kristle Trading Ltd and Anor and Anor suit* [2008] SGHC 182). Parties may choose to adopt the SIAC Rules, which contain detailed provisions on confidentiality (Rules 21.4 and 35), but they can also include express obligations of confidentiality in their arbitration agreement if this issue is of particular importance to them.

Sections 22 and 23, IAA expressly permit parties to apply to the Court for any arbitration-related proceedings to be heard other than in open Court, and to request that judgments not be published or publication be restricted only to specified information.

12.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

Yes, but only if the parties to the arbitration proceedings consent or if a Court orders that such information can be disclosed. However, in the event that an award is registered as a judgment for enforcement purposes, the information will enter the public domain in any event.

12.3 In what circumstances, if any, are proceedings not protected by confidentiality?

See question 12.1 above. The IAA does not expressly state exceptions to the general duty of confidentiality, but the Singapore Courts have generally followed the English common law approach to confidentiality (including the well-established exceptions). Where an application is made to Court in support of the arbitration, there will be no confidentiality attaching to those Court proceedings or any information relating to the arbitration which is disclosed during them (subject to any contrary Court order). It is always open to the parties to discuss and agree upon exceptions.

13 Remedies / Interests / Costs

13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

Generally speaking, an arbitral tribunal appointed to hear an arbitration under the IAA may award any remedy or relief that is permitted under the relevant rules of law chosen by the parties (Article 28 of the Model Law), unless the parties have agreed otherwise (usually by way of a limitation in the contract in question). If Singapore law is chosen as the governing law, the arbitral tribunal may award any remedy or relief that could have been ordered by the Singapore Court if the dispute had been the subject of civil proceedings in that Court (Section 12(5)(a), IAA).

13.2 What, if any, interest is available, and how is the rate of interest determined?

An arbitral tribunal may award interest (including interest on a compound basis) on the whole or any part of any sum which is: (i) awarded to any party, for any period up to the date of the award; or (ii) in issue in the arbitration proceedings but is paid before the date of the award, for any period up to the date of payment (Section 12(5)(b), IAA).

Unless an award otherwise directs, it will carry interest as from the date of the award and at the same rate as the interest rate for Court

judgments in Singapore, which is presently 5.33% (Section 20, IAA, Order 42 rule 12, Rules of High Court and the Supreme Court Practice Direction No. 66).

13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

Unless the parties have agreed to the contrary, the arbitral tribunal will be entitled to make an award on costs and, generally speaking, costs will follow the event (though the arbitral tribunal may order otherwise if it considers appropriate). The 'winning' party should be able to recover all or a large proportion of its own costs, plus the costs of the arbitration (usually the arbitral tribunal's fees and expenses, and the administrative costs of any arbitral institution). Unless otherwise specified in the award, costs in arbitrations falling under the IAA are taxable by the Registrar of the SIAC (section 21, IAA).

13.4 Is an award subject to tax? If so, in what circumstances and on what basis?

Arbitral awards are not subject to tax.

14 Investor State Arbitrations

14.1 Has Singapore signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965)?

This was ratified by Singapore in 1968 and has been given statutory effect by virtue of the Arbitration (International Investment Disputes) Act, Cap. 11.

14.2 Is Singapore party to a significant number of Bilateral Investment Treaties (BITs) or Multilateral Investment treaties (such as the Energy Charter Treaty) that allow for recourse to arbitration under the auspices of the International Centre for the Settlement of Investment Disputes ('ICSID')?

Yes. Singapore is a party to many BITs and Free Trade Agreements which allow for recourse to arbitration under ICSID. Singapore is not a party to the Energy Charter Treaty.

14.3 Does Singapore have standard terms or model language that it uses in its investment treaties and, if so, what is the intended significance of that language?

It is understood that Singapore does have and makes use of its own working terms or language during the negotiation process, but that every BIT which is concluded will generally be a product of negotiation between Singapore and its partner country.

14.4 What is the approach of the national courts in Singapore towards the defence of state immunity regarding jurisdiction and execution?

The position is governed by Section 11 of the State Immunity Act, Cap. 313, which provides that where a state has agreed in writing to submit a dispute to arbitration, the state is not immune as regards proceedings in the Singapore Courts which relate to the arbitration. This provision is subject to any contrary provision in the arbitration agreement and does not apply to any arbitration agreement between states.

15 General

15.1 Are there noteworthy trends in the use of arbitration or arbitration institutions in Singapore? Are certain disputes commonly being referred to arbitration?

Figures obtained by the International Arbitration Practice at Hogan Lovells have revealed a 17% increase in the number of cases brought before the main arbitral institutions across the globe, suggesting that the number of commercial disputes resulting in legal proceedings is increasing in the wake of the economic downturn. This growth is being seen, in particular, in "trade hot-spots", such as China, India, Central Asia, Russia and Latin America.

Singapore's growth and popularity as an arbitration centre continues. The total number of disputes referred to SIAC in 2010 rose for the tenth consecutive year. The number handled by SIAC in 2010 was 24% higher than in 2009, and the number handled in 2009 had been 60% higher than in 2008. The majority of those cases in 2010 involved Singapore parties, but the remainder of the top ten nationalities comprised parties from (in descending order) India, Hong Kong, Indonesia, Vietnam, Malaysia, China, the USA, Korea and Japan. Most cases were in the trade/commercial sector.

Maxwell Chambers, a state-of-the-art dispute resolution facility which was launched in January 2010, recently announced that it hosted 120 cases in 2010, an increase from 46 in 2009. Maxwell Chambers houses 14 custom-built hearing rooms and 12 preparation rooms, as well as many of the leading international institutions (SIAC, SIArb, ICC, ICDR/AAA, PCA and WIPO) and three barristers' chambers (20 Essex Street, Essex Court and Bankside Chambers).

15.2 Are there any other noteworthy current issues affecting the use of arbitration in Singapore, such as pending or proposed legislation that may substantially change the law applicable to arbitration?

SIAC introduced a new version of its Rules which took effect from 1 July 2010. Amongst the most significant changes are provisions for an "Expedited Procedure" and the appointment of an "Emergency Arbitrator" to grant interim relief before the arbitral tribunal has been constituted. SIAC has since received 20 applications for the Expedited Procedure (of which 12 were accepted), and 3 applications for an Emergency Arbitrator (all of which were accepted).

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Jonathan Leach is a partner in the Singapore international arbitration practice. He trained and worked in the disputes practice in London for 9 years before relocating to our Singapore office in May 2008. He has extensive experience of handling complex and high-value international commercial disputes (including international arbitrations under the Rules of the SIAC, ICC, LCIA, and UNCITRAL) in Asia and elsewhere, particularly involving joint ventures and in the fields of trade, finance, and energy. Jonathan also has acted in mediations as both counsel and assistant mediator. He is the firm's Singapore representative on the international bribery and corruption task force, and has spoken and published widely on a variety of dispute resolution topics.

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