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International Arbitration 2021

Singapore

Law & Practice
and
Trends & Developments

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SINGAPORE

Law and Practice

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SINGAPORE CONTENTS

1. GENERAL

1.1 Prevalence of Arbitration

Singapore is an established seat for international arbitrations. In particular, it has become the seat of choice for investors across Asia looking for a neutral forum and independent arbitral tribunal in light of the speed with which the region has embraced international commercial arbitration. International commercial arbitration has become the preferred method of resolving disputes across a wide spectrum of industries, particularly where the transactions have a cross-border element or involve parties from more than one jurisdiction. Singapore has also increasingly become the seat of choice for investor-state disputes for investors in the region. This has been aided by the increasing number of investor-state arbitration-related decisions by the Singapore courts. The detailed and carefully reasoned decisions by the Singapore courts have lent credence to the viability of Singapore as the seat of choice for investors and states alike.

1.2 Impact of COVID-19

Consistent with Singapore's reputation as a leading venue for dispute resolution, various dispute resolution institutions in Singapore showed their ability to adapt immediately to the difficulties associated with the COVID-19 pandemic in 2020.

Within three days of the Singaporean government's announcement that it would be imposing enhanced measures to control the spread of COVID-19 in Singapore (including the closure of most workplaces with effect from 7 April 2020), the Singapore International Arbitration Centre (SIAC) issued a press release to assure users that it would remain fully operational with all staff available. The SIAC also issued a case-management update to inform users of procedures that had been moved online.

Restrictions were eventually eased in December 2020. However, following an increase in the number of COVID-19 cases in May 2021, the Singapore government re-imposed restrictions, requiring tele-commuting to be the default mode of working. Again, the SIAC was quick to adapt to the re-introduction of these restrictions, and swiftly notified parties of the changes to its operations.

The Singapore International Mediation Centre (SIMC) launched an SIMC COVID-19 Protocol. Key features of the protocol include reduced fees and the conducting of mediation online.

Maxwell Chambers, a prominent hearing venue in Singapore, was also quick to adapt to the conducting of hybrid and virtual hearing solutions so that users could conduct hearings with safe distancing measures in place and reduce the need for travel for international parties.

1.3 Key Industries

International arbitration is prevalent across a wide spectrum of industries in Singapore. The SIAC's Annual Report for 2019 has identified the corporate sector as having the largest proportion (29%) of the number of cases it has handled. That said, Singapore continues to attract high-value project and infrastructure disputes in a wide range of sectors, including the energy and resources space. The growth of investor-state disputes for investors in the region has also been noted.

1.4 Arbitral Institutions

Singapore is home to many arbitral institutions, such as the Permanent Court of Arbitration, the International Chamber of Commerce (ICC), the Singapore Chamber of Maritime Arbitration and the SIAC, which are commonly used for international arbitrations. The SIAC is generally the most popular arbitral institution in Singapore. Established in April 2018, the ICC management

office in Singapore currently administers 130 cases.

1.5 National Courts

Applications and disputes relating to international arbitrations are heard by the General Division of the High Court or the Singapore International Commercial Court (SICC). These applications include:

- a party's appeal against the tribunal's ruling of jurisdiction;
- enforcement of orders or directions made by an arbitral tribunal as court order(s);
- an application for a court-ordered interim measure;
- an application for subpoena to testify or produce documents;
- enforcement of awards;
- the setting-aside of awards.

However, an application for a stay of proceedings to enforce an arbitration agreement may be heard by the General Division of the High Court, District Court, Magistrate's Court or any other court in which proceedings are instituted (see Section 6, International Arbitration Act (Cap 143A) (IAA))

2. GOVERNING LEGISLATION

2.1 Governing Law

The IAA governs international arbitration in Singapore. According to Section 5(2) of the IAA, an arbitration is "international" if:

- at least one of the parties has its place of business outside Singapore at the time of conclusion of the arbitration agreement;
- the agreed place of arbitration is situated outside the state in which the parties have their place of business;
- the place where a substantial part of the obligations of the commercial relationship is to be performed, or the place to which the subject matter of the dispute is most closely connected, is situated outside the state in which the parties have their place of business; or
- the parties have expressly agreed that the subject-matter of the arbitration relates to more than one country.

The IAA essentially enacts (and incorporates as its First Schedule) the 1985 UNCITRAL Model Law, albeit with the exception of Chapter VIII and a number of statutory modifications. Any departures from the Model Law are listed in Part II of the IAA. The primary legislative intent behind the IAA was to implement the Model Law (Singapore Parliamentary Reports 31 October 1994, vol 63, col 626).

Various elements of the 2006 UNCITRAL Model Law have also since been incorporated into the IAA. Section 3 of the IAA states that "the Model Law, with the exception of Chapter VIII thereof, shall have force of law in Singapore."

2.2 Changes to National Law

Two new subsections were introduced into the IAA on 1 December 2020, namely, s 9B and 12(1)(j). As explained below, these additions are timely and help Singapore remain relevant to the needs and demands of arbitration users across the globe.

In the absence of an agreed appointment procedure, Section 9B provides for a default method and timelines for the appointment of three-member arbitral tribunal in an arbitration more than two parties. The default method is as follows:

- all claimants are to appoint an arbitrator jointly;
- all respondents are to appoint an arbitrator jointly; and

- the two party-appointed arbitrators are to appoint the third presiding arbitrator jointly.

If the default method fails, powers are vested in the appointing authority (ie, the President of the Court of Arbitration of the SIAC or any other person appointed by the Chief Justice) to appoint all members of the tribunal. Prior to the inclusion of Section 9B, the IAA only provided for a process for the default appointment of a three-member arbitral tribunal in a two-party arbitration.

The new Section 12(1)(j) confers a Singapore-seated arbitral tribunal with the power to make orders and issue directions to enforce confidentiality obligations arising from (i) an agreement between the parties, (ii) any written law or rule of law, or (iii) the arbitration rules agreed or adopted by the parties. Such orders and directions are, by leave of the General Division of the Singapore High Court, enforceable in the same manner as if they were orders made by a court. The addition of Section 12(1)(j) expressly preserves and protects the confidential nature of arbitral proceedings. The amendment will provide parties with the confidence and ability to react to any breach of confidentiality obligations.

3. THE ARBITRATION AGREEMENT

3.1 Enforceability

An arbitration agreement must be in writing. However, even if it is concluded orally, by conduct or any other means, it is still considered to be in writing (and, therefore, valid) if its contents are recorded in any form (Section 2A of the IAA).

3.2 Arbitrability

The only disputes that may not be referred to arbitration are those which, if resolved by arbitration, will be contrary to public policy (Section 11 of the IAA and Section 48(1)(b) of the Arbitration Act (AA)). As such, custody disputes, the granting of statutory licences, the validity of registration of trade marks or patents and some anti-competition matters (such as matters regulated under Singapore's Competition Act) may not be arbitrated. Likewise, claims of unfair preference in respect of insolvent companies are not arbitrable, as these claims affect the substantive rights of other creditors (Larsen Oil and Gas Limited v Petroprod Ltd [2011] 3 SLR 414).

The general approach on arbitrability in Singapore is set out by the Singapore Court of Appeal in Tomolugen Holdings v Silica Investors Ltd [2015] SGCA 57; the arbitrability of a dispute is presumed as long as it falls within the scope of an arbitration clause, subject to that presumption being rebutted if it can be shown that parliament intended to exclude a particular type of dispute from being arbitrated or if permitting arbitration in a certain type of dispute would be contrary to public policy. Such non-arbitrable matters include claims arising upon insolvency or the liquidation of an insolvent company because they impinge on third-party rights. The Court of Appeal, however, noted that disputes involving Section 216 of the Companies Act (Chapter 50) – which relate to unfair prejudice or the oppression claims of minority shareholders – do not generally engage public policy considerations, as they are essentially contractual in nature. This approach was followed in the recent decision in L Capital Jones Ltd v Maniach Pte Ltd [2017] 1 SLR 312.

The Singapore High Court in Piallo GmbH v Yafiro International Pte Ltd [2014] 1 SLR 1028 has also held that actions on bills of exchange (eg, claims on dishonoured cheques) are arbitrable if the cheques were dishonoured as a result of a dispute falling within the scope of the arbitration agreement.

3.3 National Courts' Approach

The Singapore High Court in BCY v BCZ [2016] SGHC 249 has held that, where the arbitration agreement is a clause forming part of a main contract, it is reasonable to assume that the contracting parties intend for the same system of law to govern both the arbitration agreement and the main contract.

In a recent Singapore Court of Appeal decision in BNA v BNB [2019] SGCA 84 (BNA CA), the court affirmed BCY and also affirmed the principle that determining the proper law of an arbitration agreement is to be approached in the same way as determining the proper law of a substantive contract between two parties, and that the three-stage inquiry should apply, namely:

- Have the parties expressly chosen the proper law of their arbitration agreement?
- Have the parties impliedly chosen the proper law of their arbitration agreement?
- With what system of law does their arbitration agreement have its closest and most real connection? This stage only applies where there is no express or implied choice of the law which governs the arbitration agreement.

In BNA CA, the decision of the Singapore High Court was overturned and it was held that the plain reading of "arbitration in Shanghai" meant that the parties chose Shanghai to be the seat of arbitration, and not merely as the venue of arbitration.

The Singapore courts take a robust approach regarding the enforcement of arbitration agreements and will grant relief to parties seeking to enforce an arbitration agreement. Such reliefs include granting a stay of court proceedings, or anti-suit injunctions in support of arbitration agreements.

The Singapore High Court, in Hilton International Manage (Maldives) Pvt Ltd v Sun Travel & Tours Pvt Ltd (Hilton) [2017] SGHC 56, took the view that a positive agreement to arbitrate implies at least two negative obligations: not to commence court proceedings stemming from an agreement to resolve any disputes by reference to arbitration and not to set aside or otherwise attack an arbitral award in jurisdictions other than the seat of the arbitration. While the Court of Appeal (Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd [2019] SGCA 10) partially allowed the appeal against the High Court judgment, the Court of Appeal agreed with the High Court's view that foreign proceedings brought in breach of arbitration agreements amounted to vexatious and oppressive conduct on the part of the defendant. The Court of Appeal accordingly held that it would suffice to show a breach of such an agreement for an anti-suit relief to be granted unless there are strong reasons not to grant such a relief. In CCH and others and another matter [2020] SGHC 143, the High Court agreed with Hilton CA and held that that the defendants' breach of the arbitration agreement justified an anti-suit injunction and there were no strong reasons found not to grant an anti-suit injunction. The High Court ordered that the defendants discontinue the foreign proceedings they had commenced.

"Special Circumstances" Test

Furthermore, it was held by the High Court in BLY v BLZ and another [2017] SGHC 59 that a "special circumstances" test is preferred in determining whether discretion should be exercised to stay an arbitration pending a jurisdictional challenge. The court held that "special circumstances" would not include costs incurred in potentially useless arbitration proceedings and any potential detriment stemming from an award that may be passed pending determination of a curial review. This illustrates the Singapore courts' commitment to minimal judicial inter-

vention and demonstrates the high threshold for staying arbitration proceedings.

Doctrine of Separability

In BNA v BNB [2019] SGHC 142, the Singapore High Court held that the doctrine of separability would be broad enough to uphold an arbitration agreement "even when the substantive agreement into which it is integrated is valid but an operation of the substantive agreement could operate to nullify the parties' manifest intention to arbitrate their disputes" (at [77]). The High Court therefore appeared to take the view that the doctrine of separability could be applied to save an arbitration agreement even where the defect was the arbitration agreement itself (as opposed to the substantive contract).

3.4 Validity

Even if a contract is avoided, rescinded or terminated, an arbitration agreement contained in that contract will continue to be enforceable under the doctrine of separability (Article 16 Model Law, First Schedule of the IAA and Section 21 of the AA).

4. THE ARBITRAL TRIBUNAL

4.1 Limits on Selection

There are no statutory restrictions on who may act as an arbitrator. The IAA and AA both provide that no person shall be precluded from acting as an arbitrator by reason of their nationality, unless otherwise agreed by the parties (Article 11(1), Model Law, First Schedule of the IAA and Section 13(1) of the AA). However, it is not uncommon for parties to state specific requirements, such as a certain expertise or set of qualifications, for their intended arbitrator.

At the same time, parties to the arbitration must select an arbitrator who is independent of them. The arbitrator has the obligation to disclose any circumstance that gives rise to justifiable doubts as to their impartiality and independence. This obligation continues throughout the duration of the arbitration (Article 12, Model Law, First Schedule of the IAA and Section 14(1) of the AA). In international arbitrations in Singapore, frequent reference is made by counsel and arbitrators to the IBA Guidelines on Conflicts of Interest in International Arbitration even though these guidelines are not strictly binding.

4.2 Default Procedures

In the event that parties are unable to agree on an arbitrator, the IAA provides for the default appointment of a single arbitrator (Section 9 of the IAA) by the president of the court of the SIAC as appointing authority (Section 8(2) of the IAA read with Articles 11(3) and (4) of the Model Law). Likewise, for a three-person tribunal, each party may appoint one arbitrator and if parties are unable to agree on the third arbitrator, the third arbitrator shall be appointed by the president of the court of the SIAC (Section 9A(2) of the IAA).

See **2.2 Changes to National Law** for an amendment to the IAA to include a default procedure for the appointment of an arbitral tribunal in multi-party arbitrations.

4.3 Court Intervention

The court cannot intervene in the selection of arbitrators, unless there are justifiable doubts as to the arbitrator's impartiality or independence, or the arbitrator does not possess the qualifications agreed to by the parties.

4.4 Challenge and Removal of Arbitrators

Article 12 of the Model Law, First Schedule of the IAA provides that an arbitrator can be challenged where there are justifiable doubts as to the arbitrator's impartiality or independence, or

the arbitrator does not possess the qualifications agreed to by the parties. In the absence of any challenge procedure agreed to by the parties, the procedure set out in Articles 13(2) and (3) of the Model Law apply.

An arbitrator may also be replaced on their death or resignation, where the arbitrator is physically or mentally incapable of conducting the proceedings or where the arbitrator has failed to conduct the arbitration properly or make the award with reasonable despatch, or where substantial injustice has been or will be caused to a party. Under Article 14 of the Model Law, First Schedule of the IAA, where the arbitrator is unable to conduct proceedings or where the arbitrator has failed to act without undue delay, either party may apply to the Singapore High Court for the arbitrator's removal in the absence of voluntary resignation by the arbitrator or any agreement by the parties to terminate the arbitrator's mandate.

4.5 Arbitrator Requirements

The Singapore High Court in PT Central Investindo v Franciscus Wongso and others and another matter [2014] SGHC 190 held that bias can take three forms: actual bias, imputed bias or apparent bias, which would lead to disqualification of the arbitrator(s). The court held, firstly, that "actual bias" would obviously disqualify a person from sitting in judgment. Secondly, that "imputed bias" arises where an arbitrator may be said to be acting for their own cause (nemo judex in sua causa) and this may involve a situation where they have, for instance, a pecuniary or proprietary interest in the case. Here, disqualification is "certain without the need to investigate whether there is likelihood or even suspicion of bias". Thirdly, that the test for "apparent bias", which was what the aggrieved party in that case accused the sole arbitrator of, is whether a "reasonable and fair-minded person with knowledge of all the relevant facts would entertain a reasonable suspicion" that a fair hearing for the applicant was not possible.

5. JURISDICTION

5.1 Matters Excluded from Arbitration

See **3.2 Arbitrability**.

5.2 Challenges to Jurisdiction

The arbitral tribunal has the power to determine its own jurisdiction based on the Kompetenz-Kompetenz principle. This is encapsulated in Article 16 of the Model Law, First Schedule of the IAA.

5.3 Circumstances for Court Intervention

If a party is dissatisfied with the tribunal's jurisdictional ruling (whether finding that it has jurisdiction or that it does not), it may appeal to the Singapore High Court.

See **5.4 Timing of Challenge** for elaboration.

5.4 Timing of Challenge

A plea that the arbitral tribunal does not have jurisdiction must be raised not later than the submission of the statement of defence. The arbitral tribunal may, however, admit a later plea if it considers the delay justified (Article 16(2) of the Model Law, First Schedule of the IAA and Section 21(4) of the AA). In Rakna Arakshaka Lanka Ltd v Avant Garde Maritime Services (Private) Limited [2019] SGCA 33, the Singapore Court of Appeal held that it is not necessary for a party to file a formal objection or plea in the legal sense of the term to engage Article 16(3) of the Model Law as there is nothing in Article 16 that prohibits the tribunal from considering its jurisdiction on its own motion. The court also held that Article 16(3) of the Model Law and Section 10 of the IAA do not preclude a non-participant in an arbitration, who has informally objected to

the tribunal's jurisdiction, from applying to set aside the award under Article 34(2)(a)(iii) of the Model Law on the grounds of lack of jurisdiction.

Parties may then bring a challenge on the jurisdiction of the arbitral tribunal within 30 days of receiving the tribunal's ruling before the Singapore High Court (Section 10 of the IAA, Article 16(3) of the Model Law). Preliminary rulings on jurisdiction can only be challenged under Article 16(3) of the Model Law if their contents do not include the merits of the case. In AQZ v ARA [2015] 2 SLR 972, the Singapore High Court held that relief under Article 16(3) of the Model Law was not available if the tribunal's ruling dealt in some way with the merits of the case, even if the ruling was predominantly on jurisdiction. Instead, the aggrieved party's proper recourse would be to challenge the ruling under the relevant limbs of Article 34(2) of the Model Law. This decision was subsequently followed by the Singapore High Court in Kingdom of Lesotho v Swissbourgh Diamond Mines (Pty) Ltd and others [2017] SGHC 195.

A party who is thereafter dissatisfied with the decision of the High Court on a challenge brought under Section 10 of the IAA and Article 16(3) of the Model Law may then appeal to the Court of Appeal, provided that leave to do so is obtained from the High Court (Section 10(4) of the IAA, Section 21A(1) of the AA). The appeal will not operate as a stay of the arbitration proceedings unless the High Court or the Court of Appeal orders otherwise.

If the court subsequently decides upon an appeal against the tribunal's decision that the tribunal does have jurisdiction, the tribunal will continue the arbitration proceedings and make an award. If, however, the tribunal is unable or unwilling to do so, its mandate will be terminated and a new tribunal will be appointed (Section 10(6)(b) of the IAA).

Articles 16 and 34 of the Model Law

The practical difference between an application made pursuant to Article 16 of the Model Law and an application made pursuant to Article 34 of the Model Law is that the former deals specifically with arbitral rulings or awards that deal solely with decisions on jurisdiction. The supervisory court can review the tribunal's decision on a de novo basis. However, the moment an award deals with the merits of the dispute (even if it does so marginally), a party can only rely on the limited grounds within Article 34 of the Model Law to set aside the award. Where such applications are concerned, the supervisory court will not engage with the correctness of the arbitral tribunal's decision and the challenge will only be considered strictly against the threshold set out in Article 34 of the Model Law.

5.5 Standard of Judicial Review for Jurisdiction/Admissibility

The court will review an arbitral tribunal's decision de novo. This was affirmed by the Singapore Court of Appeal in PT First Media TBK (formerly known as PT Broadband Multimedia TBK) v Astro Nusantara International BV [2014] 1 SLR 372, and subsequently affirmed by the same court in Sanum Investments Ltd v Government of the Lao People's Democratic Republic [2016] SGCA 57. In Sanum, the court held that a de novo review entails that there is no basis for deference to be accorded to the tribunal's findings. However, the court endorsed the view that a de novo review does not mean that all that has transpired before the arbitrator should be disregarded, but that the court is at liberty to consider, unfettered by any principle limiting its fact-finding abilities, the material before it. This was subsequently affirmed by the Singapore Court of Appeal in AKN v ALC [2015] 3 SLR 488 at [112], and the Singapore High Court in Kingdom of Lesotho v Swissbourgh Diamond Mines (Pty) Ltd and others [2017] SGHC 195.

5.6 Breach of Arbitration Agreement

The Singapore courts take a robust approach. A stay of judicial proceedings is mandatory in an international arbitration (Section 6 of the IAA and Article 8 of the Model Law) but discretionary in a domestic arbitration (Section 6 of the AA). However, even in an application for a stay under Section 6 of the AA, the burden is on the party that wishes to proceed in court to "show sufficient reason why the matter should not be referred to arbitration". Assuming the applicant is ready and willing to arbitrate, the court will only refuse a stay in exceptional cases because of Singapore's strong policy in favour of arbitration (see Maybank Kim Eng Securities Pte Ltd v Lim Keng Yong and another [2016] 3 SLR 431).

An application to the court for pre-action disclosure will not be stayed pursuant to Section 6 of the IAA, because it would be premature (Navigator Investment Services Ltd v Acclaim Insurance Brokers Pte Ltd [2010] 1 SLR 25).

5.7 Third Parties

An arbitral tribunal cannot assume jurisdiction over non-parties to an arbitration agreement and non-signatories to the contract containing the arbitration agreement, subject to the exceptions below:

- Section 9, Singapore's Contracts (Right of Third Parties) Act allows third parties to rely on an arbitration clause or agreement to enforce a term in a contract if the contract expressly provides that they may enforce that term in their own right or if that term purports to confer a benefit on them;
- the legal assignee of a contract may also, upon giving notice of assignment to the other party, be entitled to the rights of a party under the arbitration agreement;
- a principal, whether disclosed or undisclosed, of a party that acted as an agent in the agreement has rights as a party to the arbitration agreement; and
- the legal representatives of the estate of a deceased, and trustees in bankruptcy, are also entitled to that party's rights under the arbitration agreement. An insurer claiming through a subrogated action is also bound by the terms of an arbitration clause by which the insured was bound.

No distinction appears to be made between foreign and domestic parties.

6. PRELIMINARY AND INTERIM RELIEF

6.1 Types of Relief

One interim measure that an arbitral tribunal may order under Section 12 of the IAA is for a claimant to provide security for costs (Section 12(1)(a) of the IAA), although the power to do so may be restricted by Section 12(4), which provides that an order cannot be made only by reason of the fact that the claimant is an individual residing outside Singapore or a corporation incorporated or controlled outside Singapore. Similar provisions are found in the AA (Section 28(2) of the AA). Arbitral tribunals commonly grant preliminary or interim relief in the form of prohibitory injunctions and freezing injunctions to preserve assets.

6.2 Role of Courts

The Singapore courts have the power to grant many of the types of relief available to the tribunal under the IAA and AA, whether before or after arbitration proceedings have commenced. However, the court's power in respect of international arbitrations is curtailed to the extent that parties should apply to the court only if the arbitral tribunal has not been constituted or is otherwise unable to act or grant the relief sought (Section 12A(6) of the IAA). It is also now clear that the

court's power to assist international arbitrations does not extend to the granting of security for costs or the discovery of documents. In this regard, the Singapore High Court has confirmed that it had no power to grant an order for the discovery of documents prior to the commencement of an arbitration (Equinox Offshore Accommodation Ltd v Richshore Marine Supplies Pte Ltd [2010] SGHC 122).

The Singapore courts uphold the principle of minimum curial intervention in respect of arbitration-related applications. This was emphasised in a recent decision by the Singapore Court of Appeal in Republic of India v Vedanta Resources plc [2021] SGCA 50. In this matter, the Singapore Court of Appeal had to consider whether a party to an arbitration can apply to the supervisory court (by way of an application for declaratory relief) to reconsider a question of law which had already been decided by the arbitral tribunal. The arbitral tribunal had made procedural orders finding that an implied obligation of confidentiality applied in every arbitration governed by Singapore procedural law, subject to exceptions. When the appellant subsequently applied to the arbitral tribunal to disclose certain documents, the application was rejected by the arbitral tribunal. The appellant thereafter applied to the Singapore High Court seeking a declaration that the documents disclosed are not confidential or private, arguing that no obligation of confidentiality attached or should attach to investment treaty arbitrations under Singapore law as the law of the seat. At first instance, the Singapore High Court disagreed with the respondent's objection that the application amounted to an abuse of process and a collateral attack on the arbitral tribunal's procedural orders. However, the Singapore High Court declined to exercise discretion to grant the declarations sought by the appellant. The Singapore Court of Appeal dismissed the appeal. First, there was no legitimate legal basis for the appellant to invoke the jurisdiction of the supervisory court on the basis that the procedural orders related to the law of the seat. Further, even if the arbitral tribunal had erred in finding that confidentiality applied to Singapore-seated investment treaty arbitrations, this would amount to an error of law, which is insufficient to justify curial intervention. The court considered that the application was an abuse of process as it was, in essence, a back-door appeal against the arbitral tribunal's procedural orders to dismiss the appellant's disclosure applications and/or an attempt to re-litigate questions which had already been considered and determined by the arbitral tribunal.

6.3 Security for Costs

See **6.2 Role of Courts**.

7. PROCEDURE

7.1 Governing Rules

In the absence of parties' prior agreement, neither the IAA nor the AA provides for a default mechanism for determining the place of arbitration or the language of the arbitration proceedings. The procedural rules agreed to by the parties, however, often provide for such matters. In the absence of any other mechanism, the arbitral tribunal ultimately has the discretion to determine such matters.

Nevertheless, the IAA, which adopts the procedure set forth in the Model Law, provides that arbitration proceedings are commenced when a request to refer a dispute to arbitration is received by the respondent (Article 21 of the Model Law). The AA also contains similar provisions.

Further, procedural rules usually specify what the request for arbitration (or notice of arbitration) should contain. For example, the SIAC Rules require the claimant to file a notice of

arbitration with the SIAC Registrar (Rule 3.1 of the SIAC Rules). The notice of arbitration should comprise:

- a demand that the dispute be referred to arbitration;
- the names, addresses, telephone numbers, facsimile numbers and email addresses, if known, of the parties to the arbitration and their representatives, if any;
- a reference to the arbitration agreement invoked and a copy of the arbitration agreement;
- a reference to the contract or other instrument (eg, investment treaty) out of or in relation to which the dispute arises and, where possible, a copy of the contract or other instrument;
- a brief statement describing the nature and circumstances of the dispute, specifying the relief claimed and, where possible, an initial quantification of the claim amount;
- a statement of any matters that the parties have previously agreed as to the conduct of the arbitration or with respect to which the claimant wishes to make a proposal;
- a proposal for the number of arbitrators if not specified in the arbitration agreement;
- unless otherwise agreed by the parties, the nomination of an arbitrator if the arbitration agreement provides for three arbitrators, or a proposal for a sole arbitrator if the arbitration agreement provides for a sole arbitrator;
- any comment as to the applicable rules of law;
- any comment as to the language of the arbitration; and
- payment of the requisite filing fee.

The claimant must also, at the same time, send a copy of the notice of arbitration to the respondent and it must notify the SIAC Registrar that it has done so, specifying the mode of service employed and the date of service (Rule 3.4 of the SIAC Rules).

Although Article 24(1) of the Model Law provides that an arbitral tribunal has the discretion to decide whether to hold oral hearings, the SIAC Rules provide that the tribunal must, unless the parties have agreed on a documents-only arbitration, hold a hearing for the presentation of evidence or oral submissions, or both, on the merits of the dispute, including, without limitation, any issue as to jurisdiction (Rule 24.1 of the SIAC Rules).

7.2 Procedural Steps

The AA and IAA do not have a specific list of mandatory procedural provisions from which parties may not contractually deviate.

7.3 Powers and Duties of Arbitrators

Arbitrators have wide powers. For instance, they have the power to order a claimant to provide security for costs (see **6.1 Types of Relief**).

There is also no prohibition on dissenting opinions in either the IAA or AA. Hence, tribunal members who do not agree with the majority view in an award may issue dissenting opinions.

However, while neither the IAA nor the AA prescribes a time-limit within which an award should be rendered, a tribunal should conduct the arbitration without undue delay (Article 14, Model Law). A similar provision can be found in the AA (Section 16). Nevertheless, there does not appear to be any Singapore case law defining what would amount to "undue delay". In Coal & Oil LLC v GHCL [2015] 3 SLR 154, the Singapore High Court found that a 19-month delay in the release of the award did not violate any rule of natural justice.

7.4 Legal Representatives

There are no restrictions on parties appointing foreign law firms or lawyers who are not qualified in Singapore as their legal representatives in arbitration.

8. EVIDENCE

8.1 Collection and Submission of Evidence

The tribunal is not bound to apply the Singapore rules of civil procedure. The tribunal has the power to order the discovery (disclosure) of documents and interrogatories, and the giving of evidence by affidavit from witnesses (Section 12, IAA; Section 28(2), AA). Both the AA and IAA provide that the arbitral tribunal has wide discretion to conduct the arbitration in any manner that it considers appropriate (Article 19(2) of the Model Law, First Schedule of the IAA and Section 23(2) of the AA). The IBA Rules on the Taking of Evidence in International Arbitration are frequently referred to.

In practice, evidence is frequently given in the form of witness statements (sometimes made on oath, depending on the procedure agreed by the parties) that are subsequently orally verified at the evidentiary hearing, followed by cross-examination and re-examination. Cross-examination is usually not limited to the scope of the witness statements, although the tribunal may exercise some control in preventing cross-examination from straying beyond the issues identified by the parties. Re-examination is permitted, but it is usually limited to matters raised in cross-examination. Re-cross-examination is uncommon and does not usually occur. The tribunal may also adopt an inquisitorial process (Section 12(3) of the IAA). Where expert witnesses are concerned, witness-conferencing (concurrent evidence, or "hot-tubbing") is becoming increasingly popular as an alternative to the traditional examination, cross-examination and re-examination approach previously stated.

8.2 Rules of Evidence

In a Singapore-seated arbitration, the tribunal has the power to determine the admissibility, relevance, materiality and weight of any evidence (Article 19 of the Model Law, First Schedule of the IAA, Section 23(3) of the AA). The SIAC Rules further provide that the tribunal is "not required to apply the rules of evidence of any applicable law" (Rule 19.2 of the SIAC).

However, parties must be mindful of the limits imposed on the admission of evidence for arbitration-related proceedings before the courts in Singapore. In BNA CA, the respondent had earlier attempted to admit new evidence in the form of pre-contractual negotiations before the High Court (in BNA HC). The respondent argued that the parol evidence rule should be displaced because section 2(1) of the Evidence Act provides that the Act "shall apply to all judicial proceedings in or before any court, but not to affidavits presented to any court or office nor to proceedings before an arbitrator". However, the Court of Appeal refused to admit the new evidence, as the proceedings in BNA HC was not a "proceeding before the arbitrator", and admission of the new evidence would contravene the parol evidence rule under section 94 of the Evidence Act (Cap 97). Further, the Court of Appeal found that both the High Court and the Court of Appeal are bound by the parol evidence rule.

8.3 Powers of Compulsion

The court has the power to issue subpoenas to witnesses within the jurisdiction to testify or produce documents at arbitration proceedings (Section 30 of the AA and Section 13 of the IAA).

The difference between parties and non-parties is that curial assistance is required for the latter

because arbitrators derive their jurisdiction only from the agreement of parties.

9. CONFIDENTIALITY

9.1 Extent of Confidentiality

The AA or the IAA does not statutorily impose any obligations of confidentiality. Singapore courts have, however, ruled that there is an implied duty on the parties and the arbitrator not to disclose confidential information obtained in arbitration proceedings or to use them for any purpose other than the dispute in which they are obtained (Myanmar Yaung Chi Oo Co Limited v Win Nu [2013] 2 SLR 547 at [15] and International Coal Pte Ltd v Kristle Trading Ltd & Another [2009] 1 SLR (R) 945 at [82]). In that regard, a party may apply to the Singapore High Court to seal court documents in court proceedings in order to preserve the confidentiality of a related arbitration (Section 22 of the IAA).

However, the implied duty of confidentiality is not absolute. The extent to which confidentiality applies depends on the specific facts of the case. For instance, confidentiality may be lifted by the express or implied consent of the parties, where leave of court is obtained, where disclosure is reasonably necessary for the protection of a party's legitimate interests, where disclosure is in the interest of justice or where the public interest so requires (AAY v AAZ [2011] 1 SLR 1093 at [64]).

The IAA has since been amended with the introduction of Section 12(1)(j), expressly to accord arbitral tribunals the power to enforce any obligation of confidentiality (see **2.2 Changes to National Law**).

10. THE AWARD

10.1 Legal Requirements

The AA and IAA prescribe that the award must fulfil the following requirements (Article 31 of the Model Law, First Schedule of the IAA and Section 38 of the AA):

- it must be made in writing and signed by the arbitrators (in the case of two or more arbitrators, by all the arbitrators or the majority of the arbitrators provided that the reason for omitting any arbitrator's signature is stated);
- it must state the reasons for the award, unless the parties have agreed that no reasons are to be given or the award is one on agreed terms;
- it must state the date of the award and the place of arbitration; and
- a copy of the award shall be delivered to each party to the proceeding.

10.2 Types of Remedies

Section 12(5) of the IAA provides that an arbitral tribunal may award any remedy or relief that could have been ordered by the court if the dispute had been the subject of civil proceedings in that court. Furthermore, the tribunal has the power to award interest. Similar provisions are found in Sections 34 and 35 of the AA.

However, a domestic arbitral tribunal may not make orders for securing the amount in dispute, for the preservation, for interim custody or sale of the subject-matter, or to prevent the dissipation of assets.

10.3 Recovering Interest and Legal Costs

Unless the parties have agreed otherwise, a Singapore-seated arbitral tribunal has wide and general discretion to allocate and apportion costs in its award. The general rule is that "costs follow the event". This rule means that the los-

ing party will be ordered to bear the legal costs and arbitration costs incurred by the successful party, in full or in part. Notwithstanding this, a tribunal need not take Singapore civil procedure principles on the allocation of costs into account (see VV v VW [2008] 2 SLR 929). The SIAC Rules provide that most forms of costs are recoverable, including the fees and expenses of the tribunal and the SIAC's administration, as well as legal and expert fees and expenses (Rules 35–37 of the SIAC Rules).

A Singapore-seated tribunal may also award simple or compound interest on the whole or any part of sums or costs awarded under an award for any period ending not later than the date of payment (Sections 12(5), 20 of the IAA). A sum directed to be paid under an award shall, unless the award otherwise directs, carry interest from the date of the award until the date of payment and at the same rate as a judgment debt (Section 20(3) of the IAA). The default rate for judgment debts in Singapore is at present 5.33% per annum (Supreme Court Practice Directions, Part IX, para 77).

11. REVIEW OF AN AWARD

11.1 Grounds for Appeal

An award may be appealed or challenged through making an application to the Singapore High Court to set aside the award. The grounds for setting aside are found in Article 34, Model Law, supplemented by two additional grounds set out in Section 24, IAA and Section 48, AA.

Grounds for Setting Aside

Article 34, Model Law provides that the award may be set aside on the following grounds:

- a party to the arbitration agreement was under some incapacity;
- the arbitration agreement was not valid;
- the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings, or was otherwise unable to present their case;
- the award dealt with a dispute that did not fall within the terms of the arbitration agreement;
- the tribunal was improperly constituted or the arbitral procedure was not in accordance with the parties' agreement;
- the subject-matter of the arbitration meant that it could not be settled by arbitration; or
- the award was contrary to public policy.

Under Section 24, IAA and Section 48, AA there are two further grounds for setting aside an award:

- the making of the award was induced or affected by fraud or corruption; or
- a breach of natural justice occurred in connection with making the award, by which the rights of a party were prejudiced.

Under the AA, as distinct from the IAA, unless the parties have agreed otherwise, a party may appeal against an award on a question of law arising out of the award (Section 49 of the AA). It should be noted that if the parties agree for any reason to dispense with the tribunal giving reasons for the award, that agreement would include a waiver of the right to appeal against the award on a question of law (Section 49(2) of the AA).

Procedural Breach

An award will not be set aside for breach of an agreed procedure if the non-observance derives from the applicant's own doing, or if the challenge to the award is against the arbitral tribunal's procedural orders or directions that fall within the exclusive domain of the arbitral tribunal (see Triulzi Cesare SRL v Xinyi Group (Glass) Co Ltd [2014] SGHC 220).

In Coal & Oil LLC v GHCL [2015] 3 SLR 154, the Singapore High Court held that in order for an award to be set aside under Article 34(2)(a)(iv) of the Model Law – ie, that the procedure was not in accordance with the agreement of the parties – the procedural breach has to be a material breach of procedure serious enough to justify the exercise of the court's discretion to set aside the award. This would often, although not invariably, require proof of actual prejudice.

Even an award that has been remitted back to the tribunal by the court is not immune. In JVL Agro Industries Ltd v Agritrade International Pte Ltd [2016] 4 SLR 769, the High Court set aside an award after remitting the matter to the arbitral tribunal. While the award had initially been remitted to the arbitral tribunal to allow the tribunal an opportunity to cure the breach of natural justice, the arbitral tribunal sought to justify its original position instead. The breach was not remedied. As such, the High Court proceeded to set aside the award.

Timeframe

The challenge/appeal is made in the first instance to the Singapore High Court as a setting-aside application. This must be made within three months of the date of receipt of the award, and the SICC has recently held that the court has no power to extend the strict three-month time limit (BXS v BXT [2019] SGHC (I) 10). If the application fails, a party may pursue an appeal in the Singapore Court of Appeal.

The recent decisions in the Bloomberry series of cases are also instructive. In Bloomberry Resorts and Hotels Inc and another v Global Gaming Philippines LLC and another [2021] 3 SLR 725, the plaintiffs sought to overcome the time-limit in Article 34(3) of the Model Law by arguing that the time-limit ought to be extended in cases of fraud, and especially if the fraud is only discovered after the expiry of the time limit. The Singapore High Court reviewed the drafting history of Article 34(3) of the Model Law and found that while there was a proposal for a separate regime with a different time period to apply to setting aside applications brought on grounds of fraud or corruption, this was ultimately rejected. Hence, the Singapore High Court held that the time-limit in Article 34(3) of the Model Law was an absolute one, and the same time-limit equally applied to applications brought under sections 24(a) and 24(b) of the IAA.

The same issue regarding the time-limit was canvassed before the Singapore Court of Appeal in Bloomberry Resorts and Hotels Inc and another v Global Gaming Philippines LLC and another [2021] 1 SLR 1045. The Singapore Court of Appeal considered the potential "absurdity" that a party affected by fraud would be time-barred. However, the Singapore Court of Appeal held that even if a party is time-barred, it would not be bereft of a remedy as the party would still be entitled to take action to resist and set aside the enforcement of the award on the basis of fraud.

11.2 Excluding/Expanding the Scope of Appeal

Article 34 of the Model Law, First Schedule of the IAA sets out limited grounds for challenging an arbitral decision (see **11.1 Grounds for Appeal**). Furthermore, Article 5 of the Model Law, First Schedule of the IAA provides that, where these grounds are not satisfied, no court may intervene in arbitration proceedings under the IAA. In other words, Article 5 of the Model Law provides that the only grounds on which an award may be set aside are those set out in Article 34 of the Model Law. This was applied in PT Central Investindo v Franciscus Wongso and others and another matter [2014] SGHC 190, where the Singapore High Court had to consider the issue of whether a successful application to remove an arbitrator that was filed prior to the issuance of the final award would result in the final award,

which was subsequently issued, being set aside. There, the court (with reference to Article 5 of the Model Law) held that a successful application to remove an arbitrator does not in itself automatically render an award a nullity, although a challenge to an arbitrator's impartiality or independence is a ground for setting aside under Article 34(2)(a)(iv) and Article 34(2)(b)(ii) of the Model Law.

Parties have the right to appeal against an award on questions of law if it is a domestic arbitration governed by the AA. Pursuant to Section 49 of the AA, parties will have to choose to opt out of the right to appeal on questions of law.

The Ministry of Law announced a public consultation on proposed amendments to the IAA in 2019, which included the possibility of allowing parties to agree that there should be a right to appeal to the High Court on questions of law. To this end, the Singapore Academy of Law (Law Reform Committee) released a report in February 2020, with the key recommendation that the IAA should be amended to include an optional right of appeal against international arbitration awards on questions of law. Including this as an opt-in right in the IAA would clearly signal that the basis of the right to appeal is party autonomy and choice. However, to date, no such amendment has been introduced in the IAA.

11.3 Standard of Judicial Review

Judicial review of the merits of a case is not permitted under the IAA (see **11.1 Grounds for Appeal**). In TMM Division Maritima SA de CV v Pacific Richfield Marine Pte Ltd [2013] SGHC 186, the Singapore High Court held that parties "must not be encouraged to dress up and massage their unhappiness with the substantive outcome into an established ground for challenging an award".

12. ENFORCEMENT OF AN AWARD

12.1 New York Convention

Singapore is a signatory to the New York Convention, which is enacted in full in Schedule 2 of the IAA. The convention has been in force since 19 November 1986, with the reservation that the convention will only be applied to the recognition and enforcement of awards made in the territory of another contracting state.

Singapore is also a party to the International Convention for the Settlement of Investment Disputes between States and Nationals of other States (the ICSID Convention). The Arbitration (International Investment Disputes) Act was enacted to provide for the recognition and enforcement of arbitral awards under the ICSID Convention.

12.2 Enforcement Procedure

Enforcement is made by application to the Singapore High Court (Section 19 of the IAA).

The Singapore courts have developed a pro-arbitration reputation and generally favour the enforcement of awards, unless there are solid grounds upon which enforcement should be refused. In that regard, the Singapore Court of Appeal has, in at least two cases, allowed a party's challenge to a tribunal's finding that it had jurisdiction and also allowed a party's application to resist enforcement of multiple awards (see International Research Corp PLC v Lufthansa Systems Asia Pacific Pte Ltd and another [2014] 1 SLR 130 and 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).

The Singapore High Court in Manuchar Steel Hong Kong Ltd v Star Pacific Line Pte Ltd [2014] 4 SLR 832 held that it would not grant enforce-

ment of arbitral awards against a non-party to the arbitration agreement.

The Singapore Court of Appeal has upheld the enforceability of an interim award in PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation [2015] 4 SLR 364.

In the event that an award is subject to ongoing set-aside proceedings at the seat, a party could request that the Singapore court adjourn enforcement of the award (and request that the Singapore court order the other party to give suitable security), per Article VI of the New York Convention.

Foreign Awards that Have Been Set Aside

The Singapore courts, however, are unlikely to recognise the enforcement of foreign awards that have been set aside at the place of arbitration. The Singapore Court of Appeal in PT First Media TBK held in obiter that "the contemplated erga omnes effect of a successful application to set aside an award would generally lead to the conclusion that there is simply no award to enforce", otherwise such an application would have little discernible purpose. Furthermore, the Court of Appeal emphasised that it is open to a party challenging an award (on the basis of a jurisdictional challenge) within the prescribed period after issuance of the award, or at the time of enforcement of the award. As such, a party that elects not to challenge the tribunal's preliminary ruling on its jurisdiction would not be precluded from relying on its right to resist recognition and enforcement of the award on the grounds set out in Article 36 of the Model Law (see [132] of PT First Media TBK).

12.3 Approach of the Courts

The courts intervene with arbitral awards in a very limited way, as their grounds for intervention are narrowly circumscribed (see **11.1 Grounds for Appeal**). Hence, in relation to the IAA, the Court of Appeal in AKN v ALC [2015] SGCA 18 stated that courts must resist the temptation to engage with the legal merits of an award. This is based on the foundational principle in arbitration that parties choose their adjudicators: just as the parties enjoy many of the benefits of their autonomy, they must also accept the consequences of the choices they have made.

The approach the courts takes to enforcement is mechanistic, consisting of two stages. The first stage requires the production of a valid arbitral award made by reference to an arbitration agreement, and the second stage entails consideration of the validity of the agreement (Aloe Vera of America, Inc v Asianic Food (S) Pte Ltd and another [2006] SGHC 78 at [41]-[45]).

13. MISCELLANEOUS

13.1 Class-Action or Group Arbitration

Singapore does not have a regime for class-action proceedings in general.

13.2 Ethical Codes

There are no applicable ethical codes or professional standards set in stone in Singapore arbitration legislation, although institutions such as the SIAC have a Code of Ethics for Arbitrators. However, there have been discussions about Singapore taking the lead to forge an ethical code for arbitration practice.

13.3 Third-Party Funding

Third-party funding in international arbitration is regulated by Section 5B of the Civil Law Act (Cap 43).

Read together with the subsidiary legislation, Civil Law (Third-Party Funding) Regulations 2017, Singapore only allows third-party funding in international arbitration proceedings, as well as court and mediation proceedings that arise

from or out of, or are in any way connected with, international arbitration proceedings. This extends to applications for stays as well as proceedings related to enforcement of an award under the IAA.

Regulation 4 of the Civil Law (Third-Party Funding) Regulations 2017 also provides that in order to be a qualifying "Third-Party Funder" under Section 5B of the Civil Law Act, the funder must carry on the principal business of funding of costs of dispute resolution proceedings in Singapore and have a paid-up share capital of not less than SGD5 million or equivalent amount in foreign currency, or the equivalent amount in foreign currency in managed assets.

Amendments were also made to the Legal Profession Act and Professional Conduct Rules to impose a requirement on Singapore legal practitioners to disclose the existence of third-party funding (although Singapore legal practitioners are not prohibited from referring third-party funders to their clients).

13.4 Consolidation

Singapore arbitration legislation does not provide for consolidation procedures. This is subject to the applicable institutional rules. For example, Rule 8 of the SIAC Rules 2016 provides for a detailed consolidation application procedure, whether before the arbitral tribunal has been constituted or after. The general requirements are:

- all parties have agreed to consolidation;
- all claims in the arbitration have been made under the same arbitration agreement; or
- the arbitration agreements are compatible and the disputes arise out of the same legal relationships, the disputes arise out of contracts consisting of a principal contract and ancillary contracts, or the disputes arise out of the same transaction or series of transactions.

In December 2017, the SIAC also issued a proposal on cross-institution consolidation protocol to consider the possibility of consolidating arbitrations subject to different arbitration rules. In October 2018, the SIAC entered into a Memorandum of Understanding (MOU) with the China International Economic and Trade Arbitration Commission (CIETAC). Under the MOU, the SIAC and the CIETAC will set up a joint working group to discuss the cross-institution consolidation protocol.

13.5 Third Parties

See **5.7 Third Parties**.

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Rajah & Tann Singapore LLP has the only standalone arbitration practice in Singapore, with close to 30 dedicated members who are involved solely in arbitration matters. The firm has over 150 lawyers in its dispute department in Singapore who are also regularly involved in arbitration matters. These comprise practice groups such as commercial litigation, IP, insolvency and restructuring, international arbitration and shipping. As part of the largest Asian-headquartered legal network, the firm works with arbitration specialists across the Rajah & Tann Asia network seamlessly to support multi-jurisdictional arbitration matters in the region, including in China, Lao PDR, Vietnam, Thailand, Malaysia, Indonesia, the Philippines, Cambodia and Myanmar. Members of the team have been retained as arbitrators, advisers and/or counsel on arbitrations conducted under the auspices of the world's leading arbitration institutions, including the Permanent Court of Arbitration, the International Court of Arbitration of the ICC, the London Court of International Arbitration (LCIA), the American Arbitration Association, the Hong Kong International Arbitration Centre (HKIAC), the Singapore International Arbitration Centre (SIAC), the China International Economic and Trade Arbitration Commission (CIETAC), and the Asian International Arbitration Centre (formerly known as the Kuala Lumpur Regional Centre for Arbitration).

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Trends and Developments

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Trends and Developments (2021)

2021 has been a momentous year for arbitration in Singapore as Singapore cemented its position as the leading seat for international arbitration in the world. Singapore is now tied with London for this honour. Various factors have enabled Singapore's rise to the top, such as arbitration-friendly legislation that is regularly updated and reviewed, and the Singapore International Arbitration Centre (SIAC), which has established itself as a leading arbitral institution.

Singapore's ascent in international arbitration is in tandem with the country's move to become a leading dispute resolution hub. With the Singapore International Commercial Court (SICC), Singapore International Mediation Centre (SIMC), the SIAC and the presence of offices of other international arbitral institutions in Singapore, Singapore provides a full suite of dispute resolution options for parties who choose to resolve their disputes in this jurisdiction. Users also have access to training institutes such as the Singapore International Mediation Institute and the Singapore International Dispute Resolution Academy for training in mediation and dispute resolution.

With further developments to Singapore's arbitration legislation in 2020, and the SIAC's increasing global clout, Singapore is set to continue in its ascent as a leading venue for arbitration.

COVID-19 in 2020 and 2021

Various dispute resolution institutions in Singapore have evidenced their professionalism by showcasing an almost immediate adaptability to the difficulties brought on by the COVID-19 pandemic.

As countries (including Singapore) across the world entered lockdown in the middle of 2020, many companies had to impose a work-from-home policy for all employees. This meant that users (clients, lawyers, mediators and arbitrators alike) and employees from dispute resolution institutions have had to find ways and means to adapt to moving proceedings online to ensure that proceedings can still go ahead with minimal disruption and delay.

Within three days of the Singaporean government's announcement that it would be imposing enhanced measures to control the spread of COVID-19 (including the closure of most workplaces with effect from 7 April 2020), the SIAC issued a press release to assure users that the SIAC would remain fully operational with all staff available. A case management update was concurrently issued to inform users of procedures that had been moved online, including applications for emergency relief and all communications from the SIAC (including awards issued by the Registrar).

Restrictions were eventually eased in December 2020. However, following an increase in the number of COVID-19 cases in May 2021, the Singapore government re-imposed restrictions requiring tele-commuting to be the default mode of working. Again, the SIAC was quick to adapt the re-introduction of these restrictions, and swiftly notified parties of the changes to its operations.

The SIMC has also launched a SIMC COVID-19 Protocol. The Protocol is meant to provide an "expedited, economical and effective means for resolving disputes during the COVID-19 period". Key features of this protocol include reduced fees and the conduct of mediation online. The SIMC has also confirmed that settlement agreements arising from mediation proceedings held under the SIMC COVID-19 Protocol are enforceable and may either be recorded as court orders under the Mediation Act 2017 or be enforced under the Singapore Convention on Mediation (in countries that have ratified the Convention).

Hearing venues in Singapore such as Maxwell Chambers were also quick to adapt to the conduct of hybrid and virtual hearing solutions so that users could conduct hearings with safe distancing measures in place. This has helped to minimise disruption and delay to ongoing legal proceedings, as hearings can take place as scheduled even if international parties and/or members of the arbitral tribunal are unable to travel to Singapore due to stringent travel restrictions.

The SIAC's Growing International Clout

According to the SIAC's 2020 Annual Report, 94% of new cases filed with the SIAC in 2020 were international in nature. More significantly, the SIAC had 1,080 new case filings. This represents a 125% increase from the 479 new cases filed in 2019 and a 169% increase from 402 new cases filed in 2018. A sizeable portion of non-Singaporean users hailed from China, India and the United States. 2020 also saw the entry of the Cayman Islands into the top-ten user rankings for the first time. This underscores the regional and global reach of Singapore as an arbitration venue. Indeed, in the latest Queen Mary University of London and White & Case International Arbitration Survey released on 6 May 2021, the SIAC ranked as the most preferred arbitral institution in Asia-Pacific, and second in the world.

The SIAC also gained a foothold in the Americas, with the opening of the SIAC Americas office in New York in early December 2020. This is the SIAC's first foray into the Americas, which represents an important market for the SIAC. A record number of 545 cases were filed by arbitration users from the United States in 2020.

In May 2021, the SIAC received approval from the Ministry of Justice of the Russian Federation to be registered as a Permanent Arbitral Institution (PAI) under Russia's Federal Law on Arbitration. The SIAC has now joined a select group of arbitral institutions that have been granted this coveted status as a PAI. The effect of this is that the SIAC is now authorised to administer international commercial arbitrations seated in Russia. This is significant, as disputes which qualify as "corporate disputes" under Russian law (disputes arising from shareholders' agreements, joint-venture agreements, share sale, pledge and option agreements) can only be referred to licensed arbitral institutions.

Amendments to the International Arbitration Act

As part of its efforts to keep up with the latest developments in international arbitration, Singapore has introduced new provisions into the International Arbitration Act (IAA). The IAA is the legislation in Singapore which governs international arbitration proceedings seated in Singapore.

Following a public consultation helmed by the Singapore Ministry of Law, the International Arbitration (Amendment) Act 2020 came into force on 1 December 2020. Two new subsections (namely s 9B and 12(1)(j)) were introduced into the IAA. The additions introduce two out of four of the amendments initially proposed. According to the Singapore Ministry of Law, the amendments are aimed at enhancing Singapore's status as an international commercial arbitration

hub and strengthening the legal framework for international arbitration. Prior to these amendments, the IAA was last amended in 2012.

The inclusion of Section 9B to the IAA brings clarity to the tribunal constitution process in multi-party arbitrations seated in Singapore of an ad hoc nature or where the agreed institutional rules or arbitration agreement do not provide for the method of appointment of a three-member tribunal. In brief, Section 9B(1) of IAA provides for a default procedure as follows: (i) all claimants are to appoint an arbitrator jointly; (ii) all respondents are to appoint an arbitrator jointly; and (iii) the two party-appointed arbitrators are to appoint the third presiding arbitrator jointly. If the default procedure in Section 9B(1) fails, Section 9B(2) provides that the appointing authority "must, upon the request of any party, appoint all three arbitrators and designate any one of the arbitrators as the presiding arbitrator". The "appointing authority" under the IAA is the President of the Court of Arbitration (PCA) of the SIAC, pursuant to Section 8(2) of the IAA. Prior to the inclusion of Section 9B, the IAA only provided for a process for the default appointment of a three-member arbitral tribunal in a two-party arbitration. The amendment is apt, given that multi-party arbitration proceedings have become increasingly common, especially in complex commercial transactions. The amendment also aligns Singapore arbitral legislation with leading arbitral institutional rules, such as Rule 12.2 of the SIAC Rules 2016, and Article 12(6) and 12(8) of the International Chamber of Commerce (ICC) Rules 2021, both of which provide for a mechanism for the appointment of arbitrators in a multi-party arbitration. As pointed out in the Second Reading Speech by Second Minister for Law on the International Arbitration (Amendment) Bill, this amendment will serve to reduce potential delay in the conduct of arbitration proceedings in circumstances where parties cannot agree or refuse to agree on the tribunal appointment or if the party-appointed arbitrators are themselves unable to agree on a third appointment. With the default mode of appointment now set out in the IAA, parties' failure to agree on joint nominations will not prevent the expeditious constitution of an arbitral tribunal, as a party would have the right to make a request to the appointing authority to make the appointment.

The new Section 12(1)(j) confers a Singapore-seated arbitral tribunal with the power to make orders and issue directions to enforce confidentiality obligations arising from (i) an agreement between the parties, (ii) any written law or rule of law, or (iii) the arbitration rules agreed or adopted by the parties. Such orders and directions are, by leave of the General Division of the Singapore High Court, enforceable in the same manner as if they were orders made by a court. The addition of Section 12(1)(j) is important as it expressly preserves and protects the confidential nature of arbitral proceedings. Without a doubt, confidentiality is considered to be one of the most important features of arbitration. Prior to the addition of Section 12(1)(j), Singapore law recognised the implied duty of confidentiality in arbitration (see AAY v AAZ [2011] 2 SLR 528). As emphasised during the Second Reading of the International Arbitration (Amendment) Bill, the amendment recognises that confidentiality is an important attribute of arbitration and further recognises that the common law is "still developing" as to the precise extent of the obligation. Hence, although the amendment does not serve to codify obligations of confidentiality, it will serve to strengthen parties' ability to enforce existing obligations.

The Singapore Ministry of Law will continue to study the two remaining proposals.

- To allow parties to appeal to the Singapore High Court against awards on questions of law under the IAA. Currently, parties can

only appeal against an award on questions of law if it is a domestic arbitration governed by the Arbitration Act (AA). The AA applies to any arbitration where the place of arbitration is Singapore and where the arbitration is not "international" as defined under section 5(2) of the IAA. Under Section 49 of the AA, parties can further choose to opt out of the right to appeal on questions of law. A report released by the Singapore Academy of Law (Law Reform Committee) in February 2020 (Report) recommended that the IAA be amended to include an option to have a right of appeal against international arbitration awards on questions of law by adopting the formulation and standard of review currently available under Sections 49 to 52 of the AA. It was further emphasised that such a right should be an opt-in right, as it would clearly signal that underpinning the right to appeal is party autonomy and choice. However, the Report also noted that the AA currently does not define a "question of law" as compared to the UK Arbitration Act 1996, which defines a "question of law" as a "question of the law of England and Wales". In this regard, the Report recommended that if the IAA is amended, "question of law" should be defined to mean both Singapore law and international law. The latter inclusion caters for the fact that complex international arbitration proceedings sometimes raise questions of international law. Defining "question of law" to include international law would serve to empower the Singapore courts to consider also questions of international law if a party decides to appeal against an award dealing with such issues.

- To allow parties by mutual agreement to request the arbitral tribunal to decide on jurisdictional issues in a preliminary award. Section 10 of the IAA currently allows an arbitral tribunal to decide on jurisdiction "at any stage of the proceedings", ie, either at the stage of the preliminary or final award. The amendment will enable parties to request the arbitral tribunal to bifurcate proceedings and decide on jurisdiction earlier. This means that, even if the arbitral tribunal is of the view that it would be more appropriate for jurisdiction to be decided later, party autonomy can override the arbitral tribunal's view on the matter.

Singapore's Increasing Prominence as a Seat for Investor-State Arbitration

In recent years, Singapore has been selected as the seat of investor-state arbitrations. These arbitrations include White Industries v India, Lao People's Democratic Republic v Sanum Investments Ltd, Philip Morris v Australia, Swissbourgh Diamond Mines (Pty) Limited, Josias Van Zyl, The Josias Van Zyl Family Trust and others v The Kingdom of Lesotho and Vedanta Resources PLC v India.

A consequence of the increasing use of Singapore as a seat for investor-state arbitrations is that the Singapore courts have had to handle an increasing number of applications arising out of these arbitration proceedings. Two cases bear mention.

In 2016, the Kingdom of Lesotho commenced proceedings before the Singapore High Court to set aside an investment treaty award that held Lesotho liable for denial of justice. The underlying dispute between the parties arose out of the Kingdom's alleged expropriation of the investors' mining leases during the early 1990s. Related to the expropriation claim was the shuttering of a Southern African Development Community tribunal (SADC tribunal) which was established by a treaty of the Southern African Development Community (SADC Treaty). In August 2010, the SADC summit, which comprises the heads of State of all the SADC member states (including the Kingdom), unanimously resolved that the terms of the five SADC tribunal judges (which

were due to expire in October 2010) would not be renewed and that the SADC tribunal would not hear any new cases. The investors had earlier commenced proceedings against the Kingdom before the SADC tribunal in 2009. As a result of the shuttering of the SADC tribunal, the investors could not continue its expropriation claim against the Kingdom. After the shuttering of the SADC tribunal, the investors commenced arbitration against the Kingdom on the back of Article 28 of Annex 1 to the Protocol on Finance and Investment of the Southern African Development Community. The investors acknowledged that its expropriation claim fell outside of the PCA tribunal's jurisdiction because the dispute relating to the Kingdom's alleged expropriation of the investors' mining leases arose before the Investment Protocol entered into force. Hence, the question before the PCA tribunal was whether the investors could pursue their claim against the Kingdom for the shuttering of the SADC tribunal on the back of the Investment Protocol. The PCA tribunal eventually found that the Kingdom breached various obligations under the treaties, as the Kingdom had failed to protect the investors' access to the SADC Tribunal. The PCA tribunal also directed that a new tribunal be constituted to hear the investors' expropriation claim.

The Kingdom thereafter applied to the Singapore High Court to set aside the PCA tribunal's award. In a detailed 172-page judgment in Kingdom of Lesotho v Swissbourgh Diamond Mines (Pty) Limited [2017] SGHC 195, the Singapore High Court allowed the Kingdom's application on the basis that the Award dealt with a dispute not contemplated by and not falling within the terms of the submission to the arbitration. This was the first successful application to set aside an investor-state arbitral award in Singapore. The investors appealed. However, the appeal was dismissed by the Singapore Court of Appeal in 2018 and it upheld the Singapore High Court's decision to reject the decision. In reaching its decision, the Singapore Court of Appeal considered that (i) it had jurisdiction to set aside the award on the basis of Article 34(2)(a)(ii) of the Model Law, and (ii) the PCA tribunal lacked jurisdiction to hear and determine the investors' claim, as the investors' right to refer a dispute to the SADC Tribunal did not qualify as an "investment".

In a more recent decision in Republic of India v Vedanta Resources plc [2021] SGCA 50, the question before the Singapore Court of Appeal was whether a party to an arbitration who has already put a question of law to a tribunal in an investment treaty arbitration can put the same question of law before a Singapore court (this being the supervisory court) as an application for declaratory relief. In this matter, the arbitral tribunal had issued procedural orders where it found that an implied obligation of confidentiality applied in every arbitration governed by Singapore procedural law (subject to certain exceptions). When the appellant subsequently made an application to the arbitral tribunal to disclose certain documents, the application was rejected by the arbitral tribunal. The appellant therefore applied to the Singapore High Court to seek a declaration that the documents disclosed are not confidential or private, arguing that no obligation of confidentiality attached or should attach to investment treaty arbitrations under Singapore law as the law of the seat. The Singapore High Court disagreed with the respondent's objection that the application amounted to an abuse of process and a collateral attack on the arbitral tribunal's procedural orders. Instead, the Singapore High Court took the view that the appellant could make the application, but declined to exercise its discretion to grant the declaratory relief. However, on appeal, the Singapore Court of Appeal dismissed the appeal for the following reasons: (i) there was no legitimate legal basis for the appellant to invoke the jurisdiction of the

supervisory court on the basis that the procedural orders related to the law of the seat, and (ii) even if the arbitral tribunal had erred in finding that confidentiality applied to Singapore-seated investment treaty arbitrations, this constituted an error of law and would not justify curial intervention from the seat court. The Singapore Court of Appeal considered the application to be an abuse of process as it was a back-door appeal against the arbitral tribunal's procedural orders and/or a veiled attempt to re-litigate questions which had already been determined by the arbitral tribunal.

Extension of Third-Party Funding Framework for Arbitration

With the increasing popularity of use of third-party funding in international arbitration, Singapore introduced legislative amendments on 28 June 2021 to extend the third-party funding framework to encompass more categories of proceedings.

Prior to 2015, third-party funding was prohibited under Singapore law. In 2015, the Singapore High Court allowed a funding arrangement in a case involving an insolvent company pursing claims against counterparties (Re Vanguard Energy Pte Ltd [2015] 4 SLR 597). In 2017, legislative amendments were made to allow third-party funding for international arbitration proceedings. This included court and mediation proceedings that arise from or out of or are in any way connected with arbitration proceedings - including applications for stay of proceedings, as well as proceedings related to enforcement of an award under the IAA.

With the latest set of legislative amendments, the extended third-party funding framework will now include proceedings commenced in the Singapore International Commercial Court (SICC), as long as those proceedings remain in the SICC, and any appeal proceedings arising from the SICC proceedings.

However, users should take note that restrictions and controls in the Civil Law Act and the Civil Law (Third-Party Funding) Regulations 2017 apply. Only qualified third-party funders (who carry on the principal business of the funding of the costs of dispute resolution proceedings, and are subject to requirements of capital adequacy and access to funds) can provide funding. Singapore lawyers and regulated foreign lawyers practising in Singapore are also bound by requirements in the Legal Profession (Professional Conduct) Rules 2015 to disclose third-party funding arrangements. To provide further guidance to lawyers in Singapore, the Law Society of Singapore issued a Guidance Note on Third-Party Funding on 25 April 2017 to set out "best practices" for lawyers who refer, advise or act for clients who obtain third-party funding. The Guidance Note sets out recommendations relating to matters such as referring a funder to clients, terms in the funding agreement and managing conflicts of interest. On 31 March 2017, the SIAC also issued a Practice Note to set out standards of practice and conduct to be observed by arbitrators in respect of arbitration proceedings administered by the SIAC, where the involvement of a third-party funder is permissible.

The extended framework will offer companies an alternative avenue to fund meritorious claims. This is a timely development and enables Singapore to catch up with jurisdictions which have long allowed litigation funding, such as the UK, Australia and the United States. The use of third-party funders allows a claimant to share the attendant risks associated with pursing legal action. Moreover, the timing of the latest development is appropriate given that the COVID-19 pandemic may give rise to the number of companies facing financial difficulties who

may otherwise be financially unable to pursue meritorious claims. The extended framework for third-party funding will certainly serve to enhance Singapore's attractiveness as a dispute resolution hub for international arbitration users, as well as users of the SICC.

Rajah & Tann Singapore LLP has the only standalone arbitration practice in Singapore, with close to 30 dedicated members who are involved solely in arbitration matters. The firm has over 150 lawyers in its dispute department in Singapore, who are also regularly involved in arbitration matters, comprising practice groups such as commercial litigation, IP, insolvency and restructuring, international arbitration and shipping. As part of the largest Asian-headquartered legal network, it works with arbitration specialists across the Rajah & Tann Asia network seamlessly to support multi-jurisdictional arbitration matters in the region, including China, Lao PDR, Vietnam, Thailand, Malaysia, Indonesia, Philippines, Cambodia and Myanmar. Members of the team have been retained as arbitrators, advisers and/or counsel on arbitrations conducted under the auspices of the world's leading arbitration institutions, including the Permanent Court of Arbitration, the International Court of Arbitration of the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), the American Arbitration Association, the Hong Kong International Arbitration Centre (HKIAC), the Singapore International Arbitration Centre (SIAC), the China International Economic and Trade Arbitration Commission, and the Asian International Arbitration Centre (formerly known as the Kuala Lumpur Regional Centre for Arbitration).

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